CHAPTER 5

Extended Debate

Filibusters, 1789–1917

October 13, 1989

Mr. President, Filibuster!—bane of Senate majority leaders, redoubtable weapon of legislative minorities, target of editors' and cartoonists' harpoons, the object of obloquy and scorn. The word is said to have come from the Dutch word *vrijbuiter*, or "freebooter," and passed into the Spanish as *filibusteros*, "who were West Indian pirates, using a small swift vessel called a filibote." [1] To the average American, it means obstructive tactics in a legislative body. While generally associated with the United States Senate, it is not unfamiliar to state legislatures around the country.

Obstructive tactics in a legislative forum, although not always known as filibusters, are of ancient origin. Plutarch reported that, when Caesar returned to Rome after a sojourn in Spain, his arrival happened at the time of the election of consuls. "He applied to the Senate for permission to stand candidate," but Cato strongly opposed his request and "attempted to prevent his success by gaining time; with which view he spun out the debate till it was too late to conclude upon any thing that day." [2]

Filibusters were also a problem in the British Parliament. In nineteenth-century England, even the members of the cabinet accepted the tactics of obstruction as an appropriate weapon to defeat House of Commons initiatives that were not acceptable to the government. Opposition leaders had no qualms about using wordy speeches to delay and hinder the majority. In his article, "Parliamentary Obstruction," Georg Jellinek noted that Sir Robert Peel was reputed to have made "no fewer than forty-eight speeches in fourteen days" during 1831.[3] In 1881, during a period of 154 days, the House of Commons sat for 1,400 hours, 240 of which were after midnight. Debates on the Land bill "took up 58 sittings," and on the Coercion bill, 22 sittings, with 14,836 speeches delivered, 6,315 of them by Irish members. Nearly 2,000 points of order were raised during the session. Speaker Sir Henry Brand, on January 31, after a sitting of 41 hours, declared, "Mr. [Charles Stewart] Parnell [the Irish Leader], with his minority of 24, dominates the House. When will the House take courage and reform its procedure?" Speaker Brand then "simply put the question." [4]

That the members of the British Parliament were not alone in the use of lengthy

speeches as a means of obstruction is clear from what Jellinek described as the "wonderful examples on record":

> How modest seems the seven-hour obstruction speech of the Social Democrat, Antrick, in the German Reichstag, and even the twelve-hour oratorical effort of Dr. Lecher in the Austrian House of Deputies, compared with a twenty-six-hour speech which was delivered in 1893 in the parliament of British Columbia, or with the thirty-seven-hour address in which a delegate in the Roumanian Chamber of Deputies, in 1897, demanded the indictment of Joan Bratiano! . . . In April, 1896, a sitting of the Canadian House of Commons devoted to a bill dealing with the schools in Manitoba lasted a hundred and eighty hours, and in Chile a single speech is reported to have extended through ten days of a session.[5]

France, too, doubtless had her troubles, for the word *cloture* comes from the French.

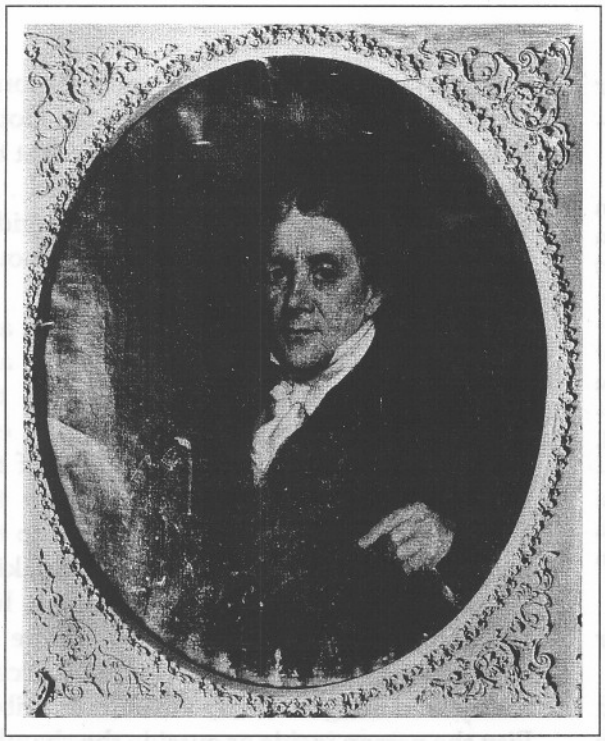
In this country, experience with protracted debate began early. In the first session of the First Congress, for example, there was a lengthy discussion regarding the permanent site for the location of the capital. Fisher Ames, a member of the House from Massachusetts, complained that "the minority . . . make every exertion to . . . delay the business." [6] Senator William Maclay of Pennsylvania complained that "every endeavour was used to waste time," that Senators Richard Henry Lee, Pierce Butler, and William Grayson "refused to go on the Business as Gun was absent." When Senator James Gunn finally arrived, "then they wanted to go and see the Ballon let off," the reference being to a hot-air balloon that was one hundred feet in circumference, the ascension of which had been much advertised. (Incidentally, the balloon caught fire, and "the experiment ended in failure.") [7] Maclay observed that "there is really such a thing as Worrying weak or indifferent Men into a Vote," and that "no business ever could have a decision, if Minority Members, were permitted to move reconsiderations, Under every pretense of new Argument." [8]

Long speeches and other obstructionist tactics were more characteristic of the House than of the Senate in the early years. But the House, on February 27, 1811, "decided . . . that after the previous question was decided in the affirmative, the main question should not be debated." [9]

The Senate was a much smaller body, and its members were more staid and polite and dignified than were the members of the House, where, prior to the Jacksonian era, most of the action occurred and most of the spectacular battles were fought. With the election of John Randolph of Virginia to the Senate in 1825, however, the speechmaking landscape began to change. Randolph had served previously in the House, where he had been notorious for his extreme eccentricity and long-winded, vitriolic diatribes. Pity the person inside or outside the chamber who came under the lash of his biting sarcasm and merciless invective. Randolph had fought several duels and was a man of ungovernable temper, as well as great ability. According to Franklin L. Burdette, author of the classic study on Senate filibusters, Randolph engaged in "long and rambling discourses," but his friends "pardoned him as one half insane," while his enemies "ascribed his irrationality to drink." [10] One may marvel at the incongruity of Randolph's sentences, his perverted logic, his roving discourse, and the deluge of words that flowed with ease from his caustic tongue. His speeches brimmed with irrelevancies; yet, there were often flashes of brilliance in his long and desultory harangues.

Fragments from *Niles' Register* of August 26, 1826, demonstrate Randolph's elocutionary dexterity, as, during debate on a bill adding to the number of circuit judges, he managed not to utter a single word concerning the subject matter of the debate.

Randolph made a passing reference to difficulties "where the legislature or the judica-



John Randolph was one of the first senators to filibuster. *Library of Congress*

ture is separated by any long interval of space, an interval in practice, not an interval in distance—I count as the German store wagoners do, by hours, not by miles."

Then, after a brief reference to how the Whigs "always toasted the constitution, church and state," he made a quantum leap to the Dismal Swamp Canal bill and then to the gerrymanderings of states into districts by "canals and roads for the purpose . . . of pleasing men, and not for doing good to the public."

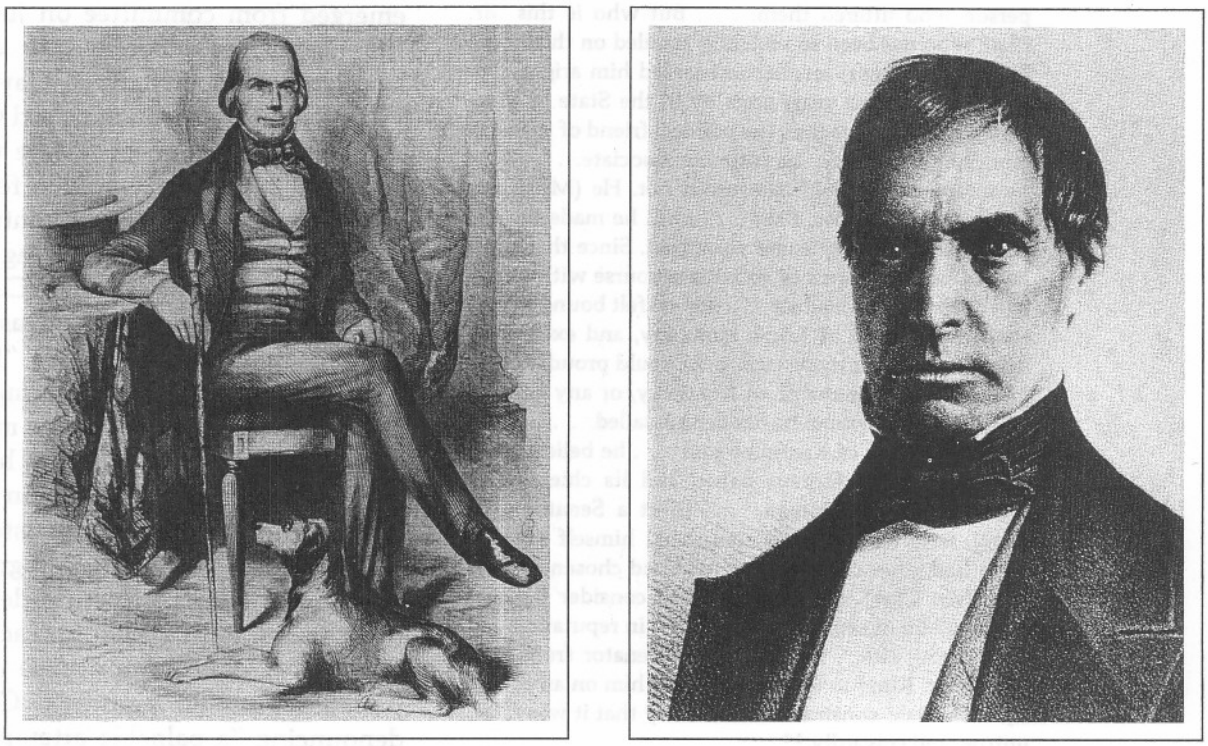
Randolph talked about the construction of roads in Ireland, after which his thoughts turned to the fortification of a town. "Leave it to a committee of carpenters," he declaimed, "and a bill will be brought in to fortify the city with wood; leave it to the tanner, and it will be leather; leave it to the stone-mason, and it will be stone." Randolph continued, "Then comes this bog trotter, with his spade on his shoulder, and his wheelbarrow in his hand, and says there is nothing, my dear sir, like turf—all fortifications should be made of turf."

Randolph's vibrant loquacity knew no limits. "What is the Baconian philosophy?" queried the senator. "A philosophy of induction—of severe reasoning founded on severe experiment—founded not on one experiment" but on many. "Sir Joseph Banks," he announced, "made but one experiment to make the fleas into lobsters, according to Pindar, but they would not become lobsters, damn their souls." Wondered the irrepressible Randolph, "how do you know, if he had made another experiment, but he would have succeeded—perhaps the want of some acid or alkali prevented it."

Nor was the press to escape his excoriation. "The press is at this moment bribed—it is in the hands of some of the most profligate men of this country." As to abuse in the newspapers and anonymous letters, he never wasted his time on them. "Any man," declared Randolph, "who will write an anonymous letter . . . in the newspaper which he is afraid to own, would, if you would give him the opportunity, put poison in your drink."

The vast expanse of Randolph's prolixity knew no limits. His speech was clearly a stellar performance in verbal gymnastics, but there was never a word said about circuit judges! [11]

Randolph served in the Senate less than fifteen months, having been appointed to fill an unexpired term. Failing of reelection to the Senate, he was again elected to the House and later served a brief stint as minister to Russia, a post from which he shortly resigned. He was once more elected to the House, where he had served less than three months of his term when he died on May 24, 1833. Thus ended the life and career of this complex man whose volcanic temperament and virulent tongue could well have made



In the course of a Senate filibuster in 1841, William R. King, *right*, challenged Henry Clay, *left*, to a duel.
Library of Congress

him, in a later age, the archfilibusterer of them all.

The dawn of complicated procedural filibustering in the Senate was yet a long way off when, at the opening of the Twenty-seventh Congress on March 4, 1841, the Whig majority determined to fire the Senate's official printers, Francis P. Blair and John Rives. A motion by Senator Willie P. Mangum of North Carolina to dismiss the printers of the *Congressional Globe* was debated from March 5 until March 11. The debate developed into what Burdette called a "prolonged and acrimonious contention, relevant to the subject but spun out by the Democrats through lengthy arguments based on grounds of constitutionality and expediency." [12] Among the most noted of the Democratic combatants were Senators John C. Calhoun of South Carolina, Thomas Hart Benton of Missouri, William R. King of Alabama, and James Buchanan of Pennsylvania. The arguments were lengthy and heated, with King and Senator Henry Clay of Kentucky engaging in scathing personal attacks, as the following exchange, reported in the third person, will attest:

> Mr. Clay. . . . If there was no other ground for his [Mr. Blair's] dismissal, he (Mr. Clay) would go on the ground of infamy of character of the print and the Printer. . . . It was but an attempt to prolong their [the Democrats'] power . . . and to force on them (the present [Whig] majority) unacceptable, unwelcome Printers. . . . The time had now come, and he trusted they [the Whigs] should avail themselves of it, and . . . adopt the resolution. . . .
>
> Mr. King of Alabama said he was not disposed to enter into a long argument. . . . his indignant feelings would not permit him to reply to the imputation of motive by which it was alleged his side of the [Senate] were actuated. Such imputations were unworthy of the

person who uttered them. . . . But who is this Mr. Blair, who has been so violently assailed on this floor? If his (Mr. King's) recollection served him aright, this man Blair resided years gone by in the State of Kentucky. . . . He was then the political friend of the Senator from Kentucky; his intimate associate. . . . Was he infamous then? He presumed not. He (Mr. King) knew nothing of Mr. Blair . . . until he made his appearance in this city some years past. Since that time, he had been on terms of social intercourse with him—had observed his conduct . . . and he felt bound to say, that for kindness of heart, humanity, and exemplary deportment as a private citizen, he could proudly compare with the Senator from Kentucky, or any Senator on this floor by whom he has been assailed. . . .

. . . Mr. Clay of Kentucky said . . . he believed the *Globe* to be an infamous paper, and its chief editor [Blair] an infamous man. . . . [B]ut a Senator [Mr. King], who he supposed considered himself responsible, had gone a step further, and had chosen to class him (Mr. Clay) with Blair, and to consider Blair as equal to him in every point of view—in reputation and every thing else. . . . and for the Senator from Alabama [Mr. King] to undertake to put him on an equality with Blair, constrained him to say that it was false, untrue, and cowardly.[13]

Clay's words were so offensive that King challenged him to a duel. Clay, who had once dueled with John Randolph, accepted the challenge. The duel was averted only when the warring senators were brought before a magistrate and placed under a peace bond. The March 11, 1841, *Newark Daily Advertiser* commented:

What a humiliating spectacle for the world to contemplate! Two American Senators arrested in the very temple of Liberty on an errand of murder!—How long will public sentiment tolerate men who thus publicly set at defiance the laws of God and man, and contemptuously violate the moral sense of the nation, in the very Halls consecrated to its protection!

Eventually, the filibuster ended, and the printers were dismissed.

Four months later, the Senate again experienced delaying tactics, this time on a bank bill, dear to the hearts of the Whigs but anathema to the Democrats. After the bill emerged from committee on June 21, 1841, the Democrats proceeded to debate it at length, greatly irritating Clay and other Whigs. On July 15, an annoyed Clay, believing that a limitation of debate would carry, announced that he would offer legislation permitting the majority to control the business of the Senate. When King of Alabama demanded to know whether Clay really intended to introduce such a measure to throttle debate, Clay responded, "I will, sir; I will." Defying him bluntly, King declared, "I tell the Senator, then, that he may make his arrangements at his boarding house for the winter," leaving little question that he was threatening an extended filibuster.

Joining the fray, an indignant Benton blasted the "design to stifle debate." "Sir," he declared, "this call for action! action! action! . . . comes from those whose cry is, plunder! plunder! plunder!" Calhoun, too, denouncing "a palpable attempt to infringe the right of speech," let it be known that he would resist any gag attempt.

Clay never pursued his announced proposal for limiting debate, as other Whig senators indicated that they would not support such a move. Debate on the bank bill continued for almost two weeks before the legislation finally passed on July 28.[14]

Five years later, in 1846, a lengthy debate was held over whether to terminate the Oregon Territory treaty with Great Britain. Long speeches delayed a decision for more than two months, until the Senate finally passed the resolution, and a peaceful settlement of the Oregon boundary was reached.[15]

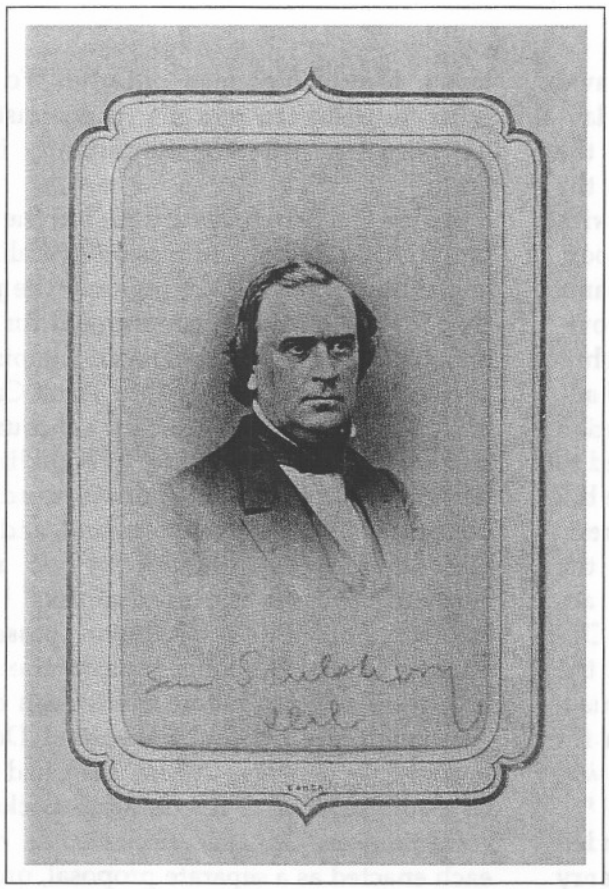
Also in 1846, the United States declared war on Mexico, and President James Polk asked Congress to appropriate two million dollars as an initial payment to Mexico for territory that he hoped would be ceded to the United States. The House approved the request but attached the Wilmot Proviso—

named for its author, Representative David Wilmot of Pennsylvania—prohibiting slavery in any territory acquired as a result of the war. The appropriation bill came up in the Senate on the morning of August 10, with final adjournment scheduled for noon. When Senator Dixon Lewis of Alabama moved to strike out the antislavery provision, Whig Senator John Davis of Massachusetts took the floor. Since the House had adjourned in the meantime, the appropriation would not become law if the Senate failed to accept the amendment. Davis talked the bill to death, saying that if it passed, the president "will feel justified in prolonging the war until . . . additional territory is acquired." When Congress reconvened in December, Polk renewed his request for the money, and fierce debate again ensued. Senate delays tied up the appropriation for more than a month, but finally the bill was approved without the Wilmot condition.[16]

The Senate again engaged in extended debate in January 1850, when Senator Henry Foote of Mississippi introduced an omnibus bill designed to organize the western territories. The area covered included California, New Mexico, and Deseret (roughly encompassing Arizona, Nevada, and Utah). The bill proposed separating Texas into two states, as well as increasing southern representation in the Senate to balance the admission of California as a free state. The Judiciary Committee, on the same day, reported a bill to strengthen regulations regarding the capture and return of fugitive slaves. These measures, combined with proposals from the North to end slavery in the District of Columbia and from the South to enact a new fugitive slave law, set the stage for the historic debates which culminated finally in the Compromise of 1850. Henry Clay unveiled a set of eight compromise proposals, which he believed would settle the slavery issue for many years. As the Senate wrangled and delayed, Clay complained bitterly, "To postpone, to delay, to impede, to procrastinate, has been the policy of the minority in this body. . . ."[17]

Before the Senate finally passed the legislation, it deleted the admission of California and other proposals, leaving only the provision for the territorial government for Utah. Senator Stephen A. Douglas of Illinois then pressed for passage of a bill to admit California. That measure quickly encountered sudden and stiff resistance. In Franklin Burdette's words, "Dilatory motions to adjourn, postpone, lay on the table, amend, and so on were employed, although by no means exploited to their full possibilities."[18] The bill for California's admission passed on August 13, and the other compromise measures were adopted before the session ended. As soon as one proposal was settled, Douglas brought up another. Where Clay had failed to secure passage of his omnibus package of compromises, Douglas succeeded in having each enacted as a separate proposal, until the package was complete.[19]

In the midst of the Civil War, in January 1863, the Senate experienced a lengthy filibuster when Senator Lyman Trumbull of Illinois, chairman of the Judiciary Committee, called up a House bill to indemnify the president and other persons for suspending the writ of *habeas corpus*.[20] The administration had requested the legislation as a war measure. On January 27, during consideration of the bill as in Committee of the Whole, Senator Willard Saulsbury of Delaware, in lengthy remarks, referred to President Lincoln as "a weak and imbecile man; the weakest man that I ever knew in a high place." Saulsbury, stating that he had conversed with the president, repeated his assertion, "I never did see or converse with so weak and imbecile a man as Abraham Lincoln, President of the United States." Other senators charged Senator Saulsbury with transgress-



During the Civil War, when Senator Willard Saulsbury was ruled out of order on the Senate floor, he brandished a gun and threatened to shoot the sergeant at arms. *Library of Congress*

ing the rules of the Senate, and the vice president, after Saulsbury accused other senators of "blackguardism," ruled the senator out of order "in attributing such language to members of the body," and ordered him to "take his seat."[21] Saulsbury appealed the ruling of the chair and proceeded to speak on the appeal. In the course of his remarks, he again attacked the president, saying, "if I wanted to paint a tyrant; if I wanted to paint a despot . . . I would paint the hideous form of Abraham Lincoln."

When the vice president ruled that Saulsbury's remarks were not pertinent to the question of order and again ordered him to take his seat, Saulsbury shouted, "The voice of freedom is out of order in the councils of the nation!" The vice president then instructed the sergeant at arms to take Saulsbury in charge "unless he observed order." Saulsbury responded, "Let him take me," and the vice president ordered the sergeant at arms to "take the Senator in charge." The *Congressional Globe* reported that "the Assistant Sergeant-at-Arms, Isaac Bassett, Esq., approached Mr. Saulsbury, who was seated at his desk. After a brief conversation, they . . . left the Senate chamber." The vice president then put the question on the appeal, and the decision of the chair was sustained.[22]

As the debate continued on the *habeas corpus* bill, Senator Saulsbury persisted in his attempts to speak without leave of the Senate after having been ruled out of order. The presiding officer again ordered Saulsbury to take his seat and, upon the senator's refusal to do so, gave the order to the sergeant at arms to "take the Senator in charge." Saulsbury then said, "Let him do so at his expense." Here, the *Globe* recorded that the sergeant at arms approached Saulsbury, who was sitting at his desk, and that "it was understood that Mr. Saulsbury refused to retire, but at a subsequent period he left the chamber." This was a rather bland portrayal of what had, in reality, taken place, for Saulsbury had brandished a gun and threatened to shoot the sergeant at arms on the spot. Later in the day, Saulsbury again returned to the chamber, sought to gain the floor, and was again told by the presiding officer to take his seat. At this point, a roll-call vote occurred on an amendment, after which the *Globe* mentioned no further interruptions by Saulsbury.[23]

On the following day, January 28, Senator Daniel Clark of New Hampshire offered a resolution to expel Saulsbury from the Senate, charging him with having brought "a concealed weapon" into the Senate, having behaved "in a turbulent and disorderly

manner," and having drawn "said weapon" and threatened "to shoot [the] Sergeant-at-Arms." Senator Clark asked that the resolution lie over until the next day.[24] On January 29, Saulsbury apologized to the Senate, not for what he had said about President Lincoln but for the "violation of the rules of the body," following which Senator Clark announced that he would not proceed with his expulsion resolution, and the matter was dropped.[25]

Meanwhile, the *habeas corpus* bill had passed the Senate on January 27 and had gone to a House-Senate conference. When the conference report was laid before the Senate on March 2, a heated debate again occurred, with Senator William A. Richardson of Illinois threatening to "express, at length, our opinions in reference to this whole measure, to which we are opposed." Senator Lazarus W. Powell of Kentucky expressed resentment at "an imputation that our object was to do what is commonly called filibustering." [26]

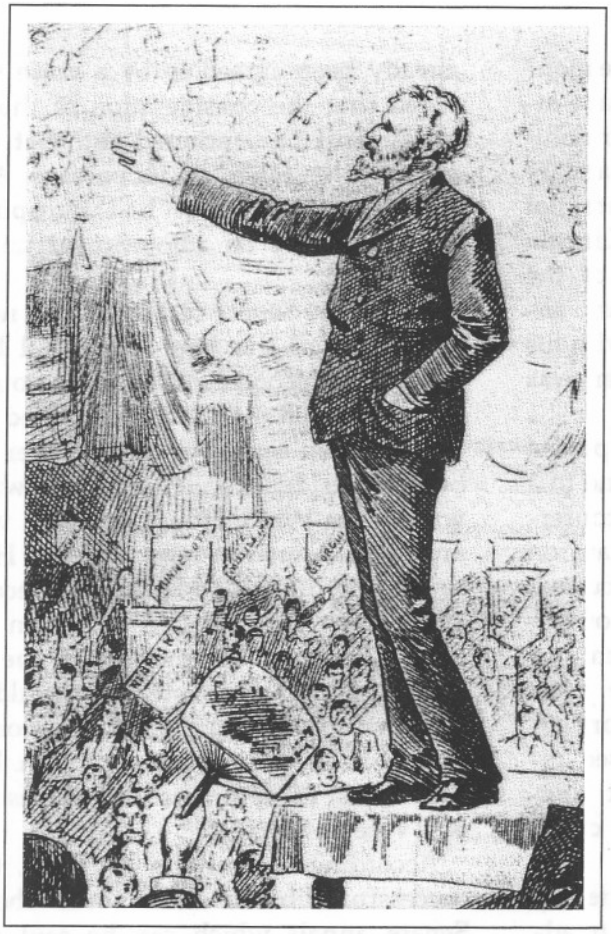
The debate continued throughout the day on March 2, with motion after motion to adjourn. At about five o'clock in the morning on March 3, Republican Senator Samuel C. Pomeroy of Kansas, who was presiding, executed a heavy-handed parliamentary action. Immediately following a roll-call vote rejecting a motion to adjourn, Pomeroy, in a voice scarcely audible, put the question: "The question is on concurring in the report of the committee of conference. Those in favor of concurring in the report will say 'ay'; those opposed 'no.' The ayes have it. It is a vote. The report is concurred in." Senator Trumbull moved quickly to take up another bill, and the motion was agreed to. Several senators had not heard the chair submit the question on the adoption of the conference report, and, amid the confusion, when Trumbull moved to consider another matter, Senator Powell, unaware that the report had already been agreed to by a voice vote, insisted that the consideration of the conference report be continued and that the yeas and nays be taken on its passage. A heated discussion over what had transpired was ended only by an adjournment until noon that day.[27]

When the Senate reconvened at noon, the opponents of the *habeas corpus* bill heatedly insisted on reconsideration and a vote. When it was pointed out that the enrolled bill had already been signed by the Speaker and the Senate president pro tempore and was on its way to the White House, a staged vote was arranged. A motion requested the House to return the bill to the Senate for reconsideration, even though such an action was no longer possible. The purpose of the motion was to allow a test vote that would enable senators opposed to the bill to go on record against it by voting for the motion. Luckily, the request for return of the bill was rejected by a vote of 13 to 25.[28]

According to Franklin Burdette, the unsuccessful filibuster of 1863 was "the first in Senate annals which can be said without shadow of doubt to have been truly intense." [29] It failed because of slick maneuvering by the majority in the face of a small but determined minority.

The next filibuster of comparable magnitude occurred sixteen years later, in 1879, and marked an advance in methods of dealing with obstructive tactics. On June 16, the Senate took up a House appropriation bill containing a provision that no money in the act could be spent "for the subsistence" of the army "to be used as a police force to keep the peace at the polls at any election." Debate began on June 17 and continued the next day.

Republicans scathingly attacked the provision, with Senator Roscoe Conkling of New York leading the opposition. Repeated motions to adjourn, points of order, appeals,



A noted orator, Senator Roscoe Conkling once led an all-night filibuster. *Library of Congress*

motions to table, motions to instruct the sergeant at arms, and breaking of quorums continued throughout the night of the eighteenth, until the Senate adjourned at 11:51 a.m. on June 19, only to reconvene nine minutes later at noon.[30]

When the dust from the all-night wrangling had settled, thirty roll-call votes and nine quorum calls had occurred after six o'clock on the evening of June 18, with little else to show for the all-night session. By June 20, tempers had subsided, and the bill was passed shortly before 2 a.m. on June 21.

The bitter filibuster had produced two new approaches to combating obstructive tactics in the Senate. When the Senate had reconvened at noon on June 19, after the all-night session, the following discussion took place:

> The President pro tempore called the Senate to order and said: "The Chair is informed by the journal clerk that owing to the length of the session yesterday and its prolongation during the night, the Journal . . . has not been finished; and the Chair suggests that the reading of it be dispensed with until it be finished."
>
> Mr. CONKLING. "I object, Mr. President; and I insist upon the observance of the . . . rule . . . which requires the Chair to cause the Journal to be read, first of all, after calling the Senate to order." . . .
>
> The PRESIDENT pro tempore. "The Journal can be read as far as it is made up; but what is not made up cannot be read. The Clerk will read the Journal as far as it is made up." . . .
>
> Mr. CONKLING. "I object to anything being done until the Journal is read."
>
> The PRESIDENT pro tempore. "The Journal will be read as far as it is made up."
>
> Mr. CONKLING. "There will not be anything done until the rest of it is read."
>
> The Journal of yesterday's proceedings was read in part.
>
> The PRESIDENT pro tempore. "Petitions and memorials are now in order."
>
> Mr. CONKLING. "Has the Journal been read?"
>
> The PRESIDENT pro tempore. "All that has been written up has been read."
>
> Mr. CONKLING. "I submit to the Chair that the rule requires that the Journal of the preceding day's proceedings shall be read. I demand the reading of the whole of those proceedings, and object to anything being done until the Journal is read.". . .
>
> The PRESIDENT pro tempore. "It is the opinion of the Chair that the Senate cannot be prevented from transacting business by a failure to write up all the Journal, and that the rule does not require an impossibility. As far as the Journal has been written up it has been read. The rest of it, in the opinion of the Chair, must be read hereafter. Therefore, the Chair overrules the point of order made by the Senator from New York."[31]

Senator Conkling appealed the chair's ruling, and Senator Frank Hereford of West Virginia moved to table the appeal. On a roll-call vote, the appeal was tabled, 33 to 4. Because a quorum had not voted, the chair

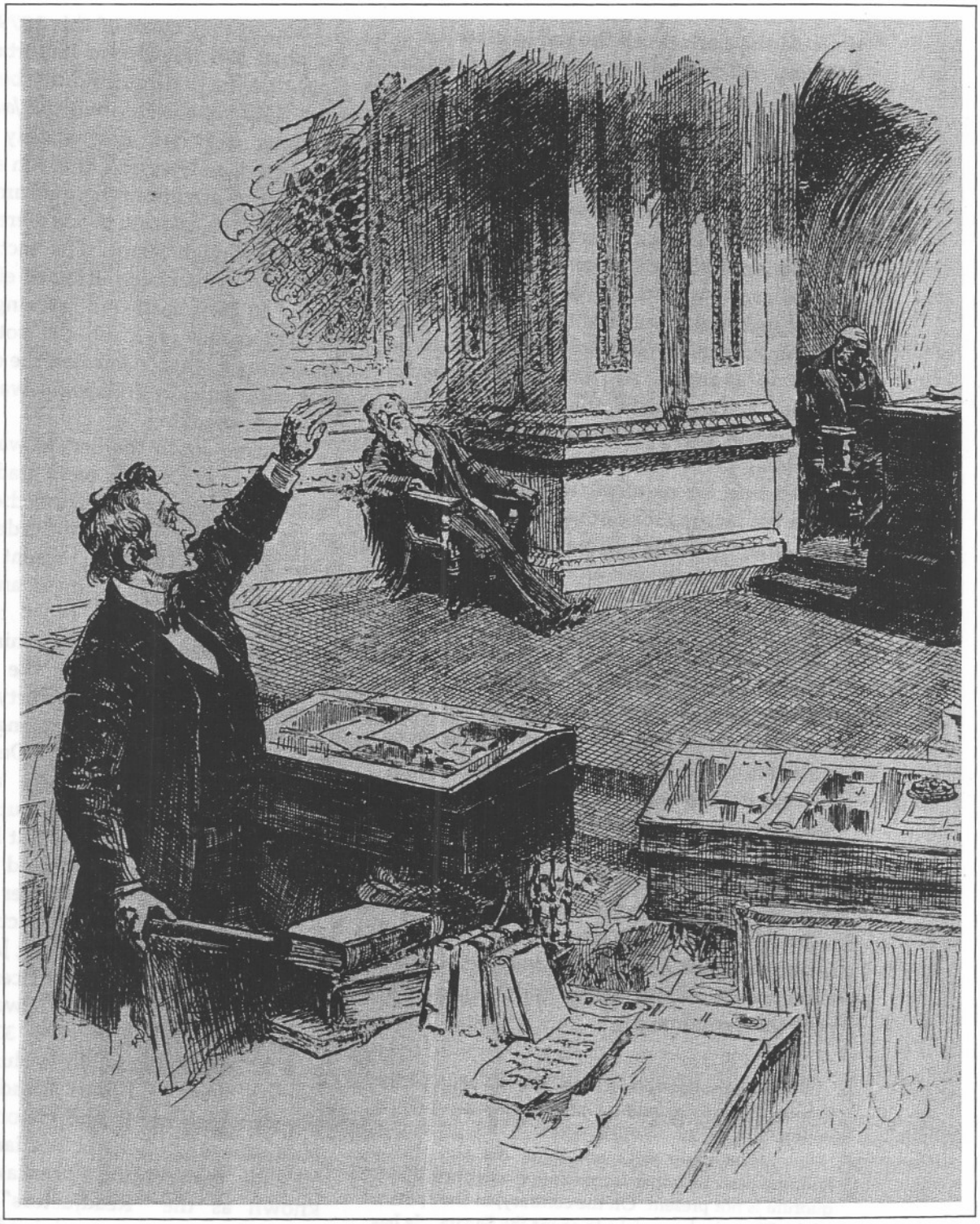
directed the clerk to call the roll to establish a quorum. A quorum of 48 senators being present, another vote was taken on the motion to table the appeal of the chair's ruling. The vote was 26 to 4 in favor of tabling, meaning that fewer than a quorum of senators had voted. The clerk again called the roll to establish a quorum, and 52 senators answered their names. Once more, the roll-call vote was taken on the motion to table Conkling's appeal of the chair's ruling, and the vote in favor of tabling was 32 to 3, again no quorum. At this point, Senator Thomas F. Bayard, Sr., of Delaware asked that Senator Zachariah Chandler of Michigan, being present but not having answered to his name, be required, under the rule, to assign his reasons for not voting. The Michigan senator responded that he viewed this "as an attempt in an unconstitutional manner to overturn . . . a standing rule of this body that cannot be overturned except in the regular way, and I will not vote to make a quorum to do an unconstitutional and wrong act." The presiding officer then stated it to be his duty to put the question to the Senate, "Shall the Senator from Michigan, for the reasons assigned by him, be excused from voting?" The yeas and nays were ordered, and by a vote of 0 to 33 the Senate refused to excuse Chandler. Again, a quorum of members had not voted, obviously because several senators who were present had remained silent, declining to vote when their names were called. The president pro tempore then announced:

> "No quorum has voted. The Chair has counted the Senate. There is a quorum present, but no quorum voting. . . .
>
> ". . . The Chair does not think the fact that a quorum has not voted is conclusive evidence that a quorum is not present. On the contrary, in the opinion of the Chair, he has a right to count the Senate. He has counted the Senate and found that a quorum is in attendance; but a quorum has not voted." [32]

Thus, in the course of this 1879 filibuster, the chair had issued two important rulings: first, that the Senate could not be prevented from doing business when the *Journal* of the previous day had unavoidably not been completed; and, second, that, on a call to establish the presence of a quorum, the chair could count a quorum if one were physically present, though silent. The tactic that the Republicans had been using so effectively—sitting in their seats and refusing to answer to their names on a roll-call vote and then answering to their names on the quorum call that automatically followed—was known as "quorum-breaking."

Filibusterism in the Senate was now full-grown, but precedents were gradually being established to gnaw at its branches, if not yet at its roots. As Franklin Burdette pointed out, "To count a quorum present to allow the Senate to proceed to business, and to count a quorum on a vote in order to declare a motion carried, are different things." [33] The first step had been taken; the second step would not come for almost thirty years.

Two years later, in the closing days of the Forty-sixth Congress, the Democrats attempted repeatedly to take action upon nominations submitted by outgoing President Rutherford B. Hayes. But Republicans, in the minority, demonstrated their adeptness in the use of the filibuster weapon and resorted to obstructionist tactics to delay action until the new president, James A. Garfield, could fill the vacant offices. The Senate that met on March 4, 1881, was evenly divided, with 37 Republicans, 37 Democrats, and 2 Independents. In Volume I of *The Senate; 1789-1989*, I have already related the events which led to the victory of the Republicans when Senator William Mahone of Virginia, representing a breakaway faction—known as the "Readjustors"—within his state's Democratic party, joined with the Republicans to control the Senate. The Demo-



A senator of the 1870's is depicted conducting "an energetic filibuster." *E. Alton, Among the Law-Makers*

crats, now in the minority, found the filibuster a useful tool to prevent the Republicans from replacing the Democratic Senate officers and staff. Two months later, when New York Republican Senators Roscoe Conkling and Thomas C. Platt resigned in May due to a patronage quarrel with President Garfield, the deadlock was broken. The Democrats had a two-vote majority and, in the interest of wrapping up the session, they agreed not to reopen the question of committee control. In return, the Republicans permitted the Democrats to maintain control of the Senate's officers and patronage.[34]

Nearly a decade later, another celebrated filibuster was launched when a so-called Force bill, or elections bill, was called up by Senator George F. Hoar of Massachusetts on December 2, 1890. The bill, designed to combat intimidation and disqualification of black voters in the South, provided for federal supervision of congressional elections. Republicans saw the legislation as a way to make political gains in the South, while to Democrats it represented an attack on states' rights. Democratic senators delivered lengthy speeches and vehemently resisted the bill. On December 23, Senator Nelson W. Aldrich of Rhode Island introduced a resolution permitting any senator, after a matter had been considered "for a reasonable time," to demand that debate be closed, after which, without further debate, a vote would occur on cloture. The resolution provided that a majority could invoke cloture, after which only motions to adjourn or recess would be in order. No quorum calls would be permitted unless, on a division or roll-call vote, a quorum was shown to be lacking. Every senator would be limited to one speech "not exceeding thirty minutes." [35]

The debate on the elections bill continued until December 31, with only a brief five-day recess over the Christmas holiday. After completing some other legislation, the Senate returned to the elections bill on January 14, 1891. The vote to proceed to the bill was a tie, 33 to 33, broken only when Vice President Levi P. Morton voted in favor. The Democrats, who thus far had resorted only to speechmaking, resolved to talk until the session ended on March 4. The Republicans were determined to overcome the minority by keeping the Senate in continuous session, leading to a contest of physical endurance.

The Senate remained in session throughout the day and night of Friday, January 16, and until 6 p.m. on Saturday. Senator Charles J. Faulkner of West Virginia nominally held the floor for eleven and one-half hours, during eight hours of which the Senate was unable to muster a quorum. Between midnight Friday and 9:30 a.m. Saturday, when the Senate was finally able to maintain a quorum,[36] the roll was called eight times, on procedural matters only. After the sergeant at arms was ordered to request the attendance of absent senators, he reported back to the Senate: seven members were too ill to comply; one said he was "much too fatigued to attend"; others would not answer the knock at their doors; Senator Matthew Butler of South Carolina simply "refused to obey the summons"; and Senator James H. Berry of Arkansas "requested me to report to the Senate that he would come when he got ready." [37]

After this exhausting session proved to be beyond the endurance of the majority, the Republicans abandoned the strategy of continuous session and concentrated, instead, on Aldrich's proposal for cloture, which he called up on January 20, 1891.[38] Concerned that a way would be found to throttle debate, the Democrats worked feverishly to displace the hated Force bill on the Senate agenda. By allying themselves with the silverites, they were able to accomplish this on January 26, when Senator Edward O. Wolcott of Colorado moved to take up a bill

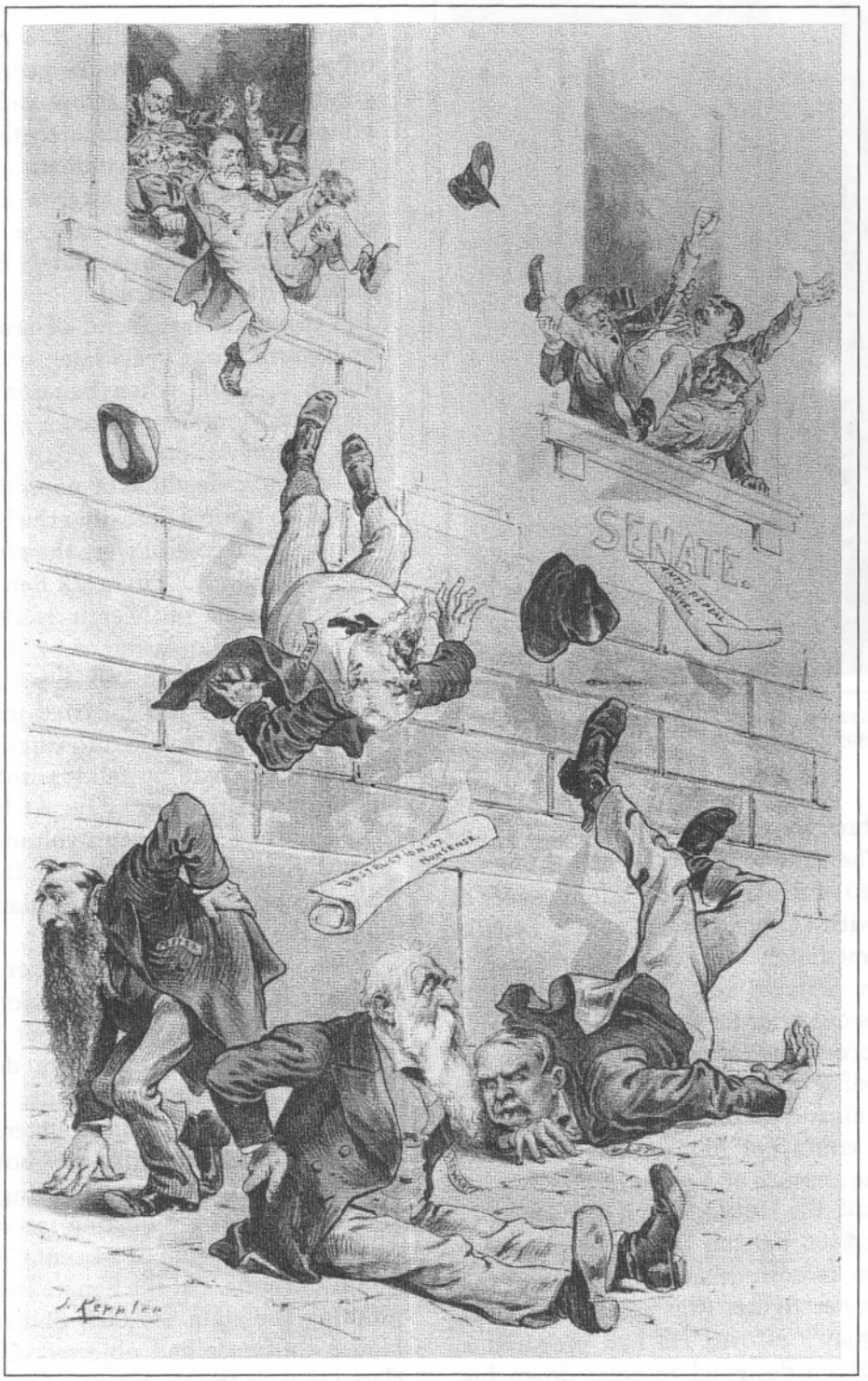
making an apportionment of representatives in Congress. The motion carried by the narrow vote of 35 to 34, thus killing the Force bill.[39] The filibusterers had succeeded in a battle they had waged from December 2 to January 26.

In August 1893, a less successful filibuster erupted on legislation to repeal the silver purchase provisions of the Sherman Silver Purchase Act. The country was in the midst of a financial panic, and the administration of Grover Cleveland supported repeal. Congress was called into session on August 7, and Senator Daniel W. Voorhees of Indiana led the fight for the administration. On August 29, Voorhees reported a House bill in the Senate, and the filibuster began. Republican Senator Fred T. Dubois of Idaho was one of the leaders of the obstructionist alliance in which silver Republicans joined with silverites and "farmer" Democrats. As Franklin Burdette assessed the situation: "Lines of battle were drawn; against the financial East, stood the Far West and most of the South. Silverites from the latter sections demanded more silver, not less. Free and unlimited coinage was their goal, their panacea for the financial ills of the country." [40]

On Wednesday, October 11, 1893, the Senate met at 11:00 a.m. and remained in session for thirty-eight hours and forty-five minutes before adjourning at 1:45 a.m. on Friday, the thirteenth. During this time, there were four roll-call votes and thirty-nine quorum calls, twelve of the quorum calls occurring between 6:20 p.m. Thursday and the adjournment early Friday morning. Senator William V. Allen of Nebraska held the floor throughout Wednesday night, until almost 8 a.m. on Thursday—some fourteen hours. The only interruptions during this time were eleven quorum calls, one roll-call vote, and speeches by colleagues. On Monday, October 16, the Senate met from eleven in the morning until ten at night. In this period, there were twelve roll-call votes and thirteen quorum calls, as the filibusterers once more used the tactic of "breaking quorums." They would demand the yeas and nays, then remain silent when their names were called. When fewer than a quorum of members voted, the presiding officer would announce that no quorum was present, even though enough senators to make a quorum were in plain sight in the chamber. When he ordered the clerk to call the roll for a quorum, a quorum of members would answer, but when the roll-call on the vote was again taken, the filibusterers would decline to vote. Hour after hour, the ludicrous scene was repeated.

Finally, on October 24, the filibusterers yielded, and, six days later, on October 30, the bill repealing the Sherman Silver Purchase Act passed by a vote of 43 to 32. "For forty-six days, then, the filibusterers had performed upon the Senate stage," wrote Burdette, "and the endeavor failed only because some of its participants deserted the enterprise." [41] Democrats had felt the pressure from the administration and surrendered, leaving too few silverites to carry on the fight.

A one-man filibuster occurred on March 3, 1897, when Senator Matthew S. Quay of Pennsylvania attempted to include in a naval appropriation bill a maximum purchase price of $400 per ton for armor plate. On March 1, Quay had moved unsuccessfully to table an amendment by Senator William E. Chandler of New Hampshire lowering the price to be paid for armor from $400 to $300. Quay decided to filibuster the conference report on the naval appropriation bill when it came back to the Senate, hoping that, with the March 4 adjournment deadline approaching, he could force the Senate to agree to a figure higher than $300. On the night of March 3, even before the conference report was ready for Senate action, Senator Quay put the



In 1893, cartoonist Joseph Keppler suggested this method of dealing with senators who filibustered against repeal of the Sherman Silver Purchase Act. *Library of Congress*

Senator Matthew Quay conducted a one-man filibuster in 1897. *U.S. Senate Historical Office*

Senate through one quorum call after another. When the Senate overrode the president's veto of a private relief bill by a vote of 39 to 7, with 44 senators not voting, Senator Quay immediately suggested the absence of a quorum. Irritated senators contended that Quay was out of order in doing so, and, on a point of order, the chair ruled that, once the presence of a quorum had been established by a roll call and no business had intervened, a senator could not immediately thereafter suggest the absence of a quorum.[42]

In the end, the House, which had supported paying $400 per ton for armor plate, receded from its position and concurred in the Senate's lower figure, thus nullifying all of Senator Quay's efforts. He had prepared a lengthy speech designed to wear down his colleagues, but, in light of the House's action, he simply inserted his remarks in the *Congressional Record*, filling 176 pages![43] Not only had Quay's exertions been in vain, but another precedential arrow had pierced the armor plate of the filibuster, thus strengthening the arsenal for combating such tactics. From that time on, after a roll call that showed a quorum present, a point of no quorum could not immediately be made if no business had intervened.

A more successful end-of-session filibuster occurred four years later, on the night of March 3, 1901, when Senator Thomas H. Carter of Montana blocked a rivers and harbors appropriation bill. With an automatic adjournment deadline of noon the next day, he had no trouble defeating the bill.[44]

Equally successful were the efforts of Senator Benjamin R. "Pitchfork Ben" Tillman of South Carolina on March 3, 1903. Tillman demanded the inclusion of $47,000 in a deficiency appropriation bill as a claim for expenses his state had incurred in the war of 1812, and he threatened to filibuster all bills before the Senate by talking until the noon adjournment the next day. At his desk, he had a pile of books, with a volume of Byron's poems open and ready for use. In the face of this threat, the Senate capitulated and included the $47,000 in the bill.[45]

When the conference report on the appropriation bill came up in the House, Representative Joseph G. Cannon of Illinois, on behalf of the House managers, deplored the Senate rules which permitted a single member, by threat of a filibuster, to impose his will on a majority of both houses. Cannon reported that the auditing officers of the treasury, in adjusting accounts, had found that "the sum of 34 cents" was due to South Carolina, but the Senate had proposed granting the state $47,000. Stating that the House conferees had objected, Cannon declared that, in the House, "we have rules . . . by which a majority, right or wrong, mistaken or otherwise, can legislate." In the Senate,

he complained, there were no such rules, so that "an individual member of that body can rise in his place and talk for one hour, two hours, ten hours, twelve hours." The House conferees, Cannon said, were unable to persuade the Senate to recede from "this gift . . . against the law, to the State of South Carolina." In a blistering attack on Senate procedures, Cannon asserted:

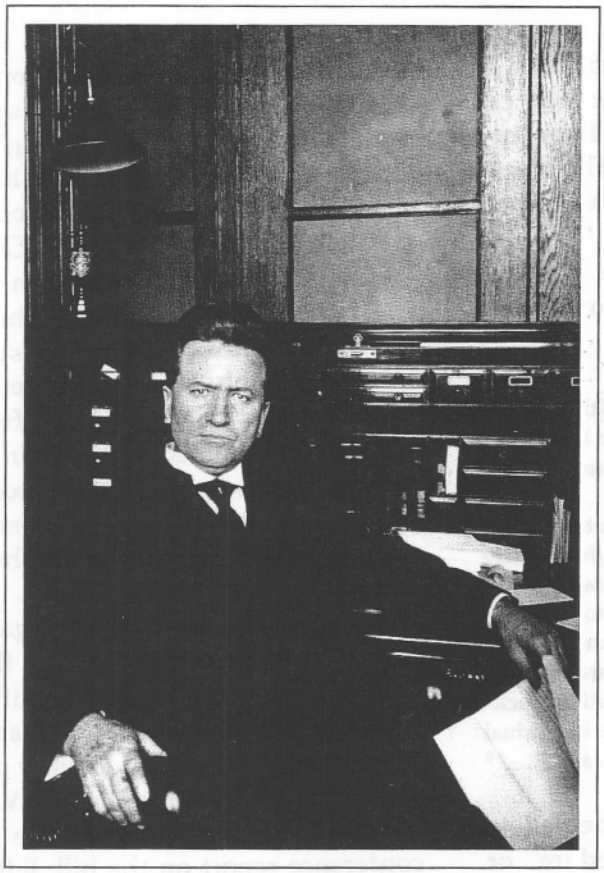
> By unanimous consent another body [the Senate] legislates, and in the expiring hours of the session we are powerless without that unanimous consent. "Help me, Cassius, or I sink!"
>
> Unanimous consent comes to the center of the Dome; unanimous consent comes through Statuary Hall and to the House doors and comes practically to the House. We can have no legislation without the approval of both bodies, and one body . . . can not legislate without unanimous consent. . . . Your conferees had the alternative of submitting to legislative blackmail at the demand, in my opinion, of one individual . . . or of letting these great money bills fail. . . .[46]

Cannon went on to argue that the Senate "must change its methods of procedure" or the House, "backed up by the people, will compel that change." Otherwise, the House would become "a mere bender of the pregnant hinges of the knee, to submit to what any one member of [the Senate] may demand of this body as a price for legislation." Although Representative Cannon concluded his remarks to prolonged applause and cheers, Senator Tillman's filibuster threat had prevailed.[47]

Another effective end-of-session filibuster began on March 2, 1907, as the Fifty-ninth Congress was coming to its close. Senator Jacob H. Gallinger of New Hampshire was pressing for an increase in the subsidy to American merchant shipping. Other senators opposed the subsidy as a burden on the taxpayers, and a Senate filibuster immediately threw a dark cloud over the adjournment landscape. Democratic Senator Edward W. Carmack of Tennessee, who was retiring from the Senate, took the floor on Sunday, March 3, and his obstructive loquacity consumed that day and evening. When the Senate met early the next day, he showed up ready again to unload his oratorical guns on the subsidy target. Senator Gallinger, not wishing to see other legislation sacrificed in the remaining few hours of the dying session, abandoned the bill. In discussing Carmack's triumph, Franklin Burdette observed, "Senators had learned well the futility of opposing a determined filibuster in a short session immediately before the automatic 4th of March adjournment." (Incidentally, Carmack died in a gun fight in Nashville twenty months later.)[48]

A brief but bitter filibuster against the Aldrich-Vreeland bill to amend the national banking laws led to some significant interpretations of Senate rules that strengthened future efforts to oppose lengthy debates. On May 29, 1908, Senator Nelson W. Aldrich of Rhode Island presented to the Senate the conference report on the bill. Filibusters are inherently much more difficult to wage successfully on conference reports than on bills, because conference reports are not amendable. But opponents of the banking legislation decided to undertake a filibuster anyway, because they believed the bill would unfairly benefit the moneyed interests of the country. Republicans, on the other hand, considered it a way to deal with bankruptcies and other pressing financial problems facing the nation.

Senator Robert M. La Follette of Wisconsin, a Republican who distrusted Aldrich, led the opposition to the conference report, nominally holding the floor for more than eighteen hours.[49] During that time, however, his lengthy speech was interrupted often for colloquies, as well as for three roll-call votes and twenty-nine quorum calls, twenty-four of which La Follette himself demanded.[50] In those days, senators holding



Senator Robert M. La Follette used frequent quorum calls as a tactic in a 1908 filibuster. *Library of Congress*

the floor did not lose it when quorum calls occurred, and La Follette frequently suggested the absence of a quorum in order to force the majority to maintain a quorum while he rested during the quorum calls. That La Follette's tactics were not popular among his colleagues was evident from the numerous interruptions of his speeches for parliamentary inquiries and points of order, as well as for angry comments directed toward him by other senators during the time he held the floor.

Senator Aldrich proved to be an astute floor manager for the conference report and a resourceful opponent of filibustering. After the Senate had been paralyzed for hours by La Follette's torrent of words and time-consuming quorum calls, Aldrich, rising to a point of order, declared: "We have had 32 roll calls within a comparatively short time, all disclosing the presence of a quorum. Manifestly a quorum is in the building. If repeated suggestions of the want of a quorum can be made without intervening business, the whole business of the Senate is put in the hands of one man, who can insist upon continuous calls of the roll upon the question of a quorum." Continuing, Aldrich said, "My question of order is that, without the intervention of business, a quorum having been disclosed by a vote or by a call of the roll, no further calls are in order until some business has intervened.". . .

> Mr. LA FOLLETTE. "Mr. President, I just wish to suggest, in order that it may appear upon the Record that debate has intervened since the last roll call."
>
> Mr. ALDRICH. "That is not business . . . My suggestion was that debate was not business."

The vice president then submitted the question of order to the Senate, which sustained Aldrich's point of order by a vote of 35 to 8. Subsequently, Senator Lee Overman of North Carolina inquired of the chair "whether, after a speech has been made," the question of a quorum could be raised, to which the vice president replied, "The Chair is of the opinion that that is not in order." [51]

Thus, the Senate took an important step beyond the precedent established in 1897. At that time, Senator Quay had been ruled out of order for attempting a quorum call immediately after one had just been concluded, in a situation where no debate had intervened. Now, Aldrich was drawing the net of precedents tighter, so that such a tactic could not be used even when there had been some intervening debate.

The 1908 session also achieved a second crucial precedent: the chair would count silent members who were present in the chamber, in order to validate a division or roll-call vote on which a quorum did not

vote. This decision occurred as Senator Charles Culberson of Texas had the floor. He was speaking when Senator La Follette rose to make a parliamentary inquiry.

The VICE-PRESIDENT. "Does the Senator from Texas yield to the Senator from Wisconsin?"

Mr. CULBERSON. "I prefer to go on, Mr. President." . . .

Mr. LA FOLLETTE. "It is not necessary for the Senator from Texas to yield to the Senator from Wisconsin when the Senator from Wisconsin rises to a parliamentary inquiry." . . .

Mr. ALDRICH. "I make the further point of order that in order to make a parliamentary inquiry a Senator must be in possession of the floor, and that he can not take the floor by asking to make a parliamentary inquiry and then make any motion."

When the chair ruled that Aldrich's point of order was well taken, La Follette appealed the ruling, stating that "a hundred times" he had seen senators rise and, "without any assent upon the part of the Senator who had the floor, raise the question that no quorum was present. Is it possible," he asked, "that important proceedings in the Senate, if one man can get the floor, may be conducted here for an unlimited period of time in the presence of the Presiding Officer and one single Senator, he declining to yield the floor?" Senator Aldrich moved to table the appeal, and, on a division, La Follette's appeal was tabled by a vote of 32 to 14, after which Senator Thomas P. Gore of Oklahoma contended that a quorum was not present.

The VICE-PRESIDENT. "The division disclosed the existence of a quorum."

Mr. GORE. "It takes forty-seven to constitute a quorum. . . ."

The VICE-PRESIDENT. "The Chair is of the opinion that a quorum is present."

Mr. GORE. "I should like to say that there are ninety-two members of this body . . . A division disclosed the presence of forty-six. As I understand, it takes one more than half to constitute a quorum."

The VICE-PRESIDENT. "There was present a Senator who did not vote. . . .

"In the present instance the Chair has counted the Senate, and there is a quorum present." [52]

This ruling expanded the earlier precedent of 1879—in which the chair had counted a quorum to determine whether enough senators were present to do business—also to include a count by the chair to declare a vote valid if a quorum was present, even though a quorum of members had not actually voted. With the filibuster broken, the conference report was adopted on May 30.

I should mention one other aspect of this historic, but brief, 1908 filibuster. Senator Aldrich demonstrated his parliamentary acumen by seeking and obtaining agreement for the yeas and nays before all debate was concluded. As a consequence, the Senate was ready to move immediately to a vote if an opportunity arose when no senator held the floor, thus bringing the filibuster to a sudden end. The usual course was to order the yeas and nays after all debate had ceased and just prior to taking the vote. The utility of Aldrich's forethought became evident later when Senator Gore, who was blind, completed speaking without realizing that Senator William Stone of Missouri, who was to relieve him in the filibuster, had momentarily left the chamber.[53] The vice president immediately put the question on adopting the conference report, and Aldrich, whose name was at the top of the alphabet, promptly responded. Senator Weldon Heyburn of Idaho, realizing what was happening, vainly sought recognition.

THE VICE-PRESIDENT. "The question is on agreeing to the report of the committee of conference."

Mr. ALDRICH. "I ask that the roll be called."

The VICE-PRESIDENT. "The secretary will call the roll."

Mr. HEYBURN. "Mr. President—"

The secretary proceeded to call the roll and Mr. Aldrich responded to his name.

Mr. HEYBURN. "I addressed the Chair before the commencement of the roll call."

Mr. ALDRICH. "The roll call can not be suspended."

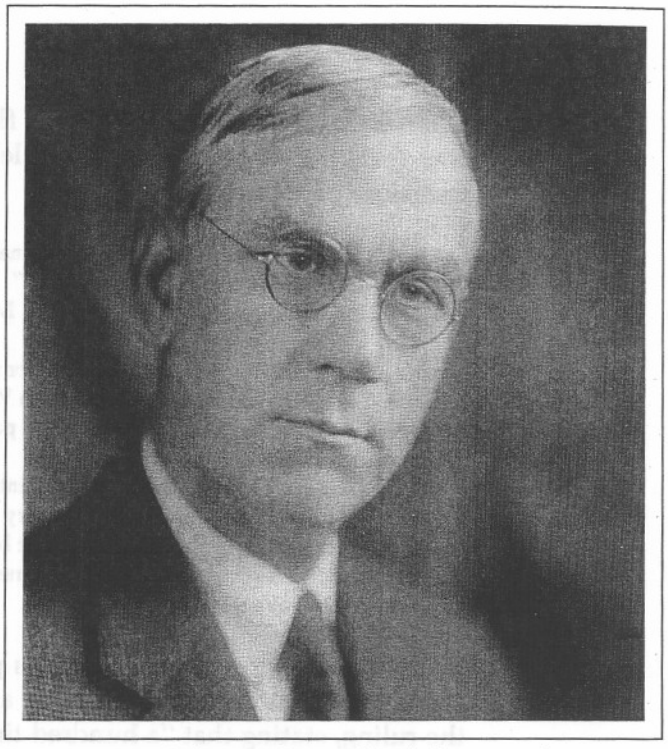
Mr. HEYBURN. "I do not ask that it be suspended. It was started with undue haste. I was addressing the Chair." [54]

Heyburn had clearly sought recognition before Aldrich responded on the roll call, and, as Franklin Burdette observed, "it must be said that the filibuster was overcome by doubtful practice" and "for the first time since the practice had risen to great prominence in the Senate, a majority ruthlessly confronted filibusterism with restraints." [55]

In spite of the sharp practices that had been used, the 1908 rulings represented important milestones on the long road toward curtailing filibusters.

Filibusters continued to erupt intermittently before the cloture rule was adopted in 1917. The most prominent one in that period was the prolonged debate in 1915 over the ship purchase bill. The legislation authorized the United States to purchase, construct, equip, and operate merchant vessels in the foreign trade. World War I had begun in July 1914, after the June 28 assassination of the Austrian crown prince, Archduke Francis Ferdinand, and his wife, Sophie. The fighting had spread to the seas, with German torpedo boats and cruisers attacking shipping and German submarines roaming the oceans. Because shipping charges were high, due to a shortage of vessels, supporters of the legislation argued that expanding the merchant fleet would lead to a more rapid movement of goods and lower shipping costs. Opponents lined up with the shipping interests and attacked the bill as being socialistic.

The Republican minority in the Senate strongly opposed the measure and conducted a lengthy filibuster that dragged on for weeks. Discussions lasted into the evenings, and, on Friday, January 29, an all-night session occurred. Starting at eleven o'clock that morning, the session continued for thirty-six hours and fifteen minutes—until 11:15 p.m. on Saturday. Friday night was a night of wrangling and confusion, with the Senate tying itself in parliamentary knots on top of knots. There were points of order in layers, with appeals from the chair's rulings, motions to table, quorum calls, demands that senators be required to assign their reasons for not voting, warrants of arrest issued for absent senators, and votes on the motions. Senators disputed the chair's rulings and challenged the power of recognition by the chair without the right of appeal; there were questions of privilege, the calling to order of senators by the chair, and cries for the "regular order." The scene was one of wild uproar and chaos—a night to remember!



During a 1915 filibuster, Senator Reed Smoot spoke without interruption for more than eleven hours.
U.S. Senate Historical Office

Finally, Senator Reed Smoot of Utah gained recognition, and the tumult subsided. Smoot opposed the bill, saying that he favored building an American merchant

marine by the granting of subsidies. He called the pending bill "undemocratic, unrepublican, un-American, vicious in its provisions, and . . . dangerous and mischievous if it ever becomes law." Smoot's was one of the outstanding speeches in the history of filibusters. A *New York Times* story on January 30 stated that Smoot "settled down with evenly modulated voice to an address that lasted, without even the interruption of a rollcall, for 11 hours and 35 minutes." [56]

During Smoot's speech, Senator John Sharp Williams of Mississippi interrupted him to ask if he had "calculated the amount of money that he is costing the American shippers by his speech?" Williams opined that it was costing "$20,800 an hour" and that "if it continues much longer, he [Smoot] will very nigh bankrupt them." [57]

The Democratic majority had decided upon a strategy of continuous session, but, as always, the hours became as wearing upon the majority as on the minority. The *Times* reported that senators were sleeping "on couches in chamber" and catnapping "in cloakrooms." [58]

Finally, after thirty-six-and-a-quarter hours, thirteen roll calls, and five quorum calls, the Senate recessed until Monday, February 1. The filibuster then continued, with no sign of concluding. The session on February 8 began at noon and ran until 6:10 p.m. on February 10, a total of fifty-four hours and ten minutes, with thirteen roll-call votes and nine quorum calls. Six of the thirteen votes involved challenges to the chair's rulings, and four were on motions to adjourn or to recess—which gives some indication of the dilatory nature of the actions.[59]

At one point during the six-week-long filibuster, the Democrats found themselves having to delay action on the bill when several of their members joined the Republican opposition. Only after absent Democrats heeded urgent calls to return to Washington from distant parts of the country was the majority party again in a position to press for a vote on the legislation. Referring to the dilemma that had temporarily confronted the Democrats, Senator James A. Reed of Missouri said:

> Mr. President, a few evenings ago we listened to a speech here that lasted all night, delivered by the Senator from Utah [Mr. Smoot]. The Republican side of this Chamber appeared to be well-nigh exhausted. It looked as though tired nature was to bring a surcease to our woes of waiting, when some Democrats entered into an arrangement with the Republican side of the Chamber whereby dilatory motions were to be offered to this bill and a combination effected between a small portion of the Democrats and nearly all of the Republicans; and then, having finally secured the attendance of Senators who have been brought here thousands of miles, who were absent for good and sufficient cause, we now witness the performance of last night, when, by a concerted action, nearly every Republican in this body went to his home, to his bed, with the understanding that the verbal stalwart who was then occupying the floor would hold it until a certain hour, when these gentlemen might rise from their couches, put forward another individual capable of talking several hours, a physical logician, an athletic orator, who could stand the exertion of remaining upon his feet and employing his vocal chords, the proposition being that again they would come here in relays, all of this . . . to deny the people whom this body represents any opportunity to have their will as so represented crystallized into law.[60]

In an effort to force the constant attendance of senators and thus avoid the loss of quorums, Senator Reed proposed that the Senate adopt the following standing order, to remain in effect until otherwise ordered:

> All Senators are required to appear forthwith in the Senate Chamber and to remain in the Chamber until excused by the Senate. Any Senator disobeying this order shall be in contempt of the Senate and shall be brought to the bar of the Senate and dealt with as the Senate may order.[61]

Explaining the reason for his proposal, Senator Reed observed:

We have witnessed now for weeks not an attempt to do business, but an attempt to prevent the doing of business; not a purpose to come to a vote, but a deliberate conspiracy to prevent a vote. Senators have been arranged in relays, a part of them to retire to their downy couches of ease and to the embracing arms of sweet slumber, while one or two able-bodied and lung-experienced aerial athletes continue to pour forth a ceaseless flow of eloquence, which invariably would be characterized outside of this Chamber by language which is not here parliamentary, and therefore may not be employed. . . . it might be said that in the attempt to defeat this remedial legislation gentlemen were willing to obstruct the very machinery created by the law for the enactment of legislation for the expression of the will of the people.[62]

Senator Williams gave notice of his intention to move to amend Rule XXII of the standing rules as follows:

Any Senator arising in his place and asserting that in his opinion an attempt is being made on the floor of the Senate to obstruct, hinder, or delay the right of the Senate to proceed to a vote, the Chair shall, without permitting any debate thereon, put the question to the Senate, "Is it the sense of the Senate that an attempt is being made to obstruct, hinder, or delay a vote?" And if that question shall be decided in the affirmative, then it shall be in order, to the exclusion of the consideration of all other questions, for any Senator to move to fix a time for voting on the pending bill or resolution and all amendments thereto, and the said motion shall be decided without debate: Provided, however, That the time fixed in said motion for taking the vote . . . shall be at least two calendar days after the day on which said motion is made.[63]

Not surprisingly, neither Senator Reed's proposed order to force the constant attendance of senators nor Senator Williams' proposed cloture rule was ever approved, and the filibuster was eventually successful, after having raged for thirty-three calendar days. On February 18, the majority surrendered. A sizable and determined minority's opposition had proved insurmountable on the battlefield of the Senate floor. The ship purchase bill was dead.

The next major development in controlling filibusters was the adoption in 1917 of the Senate's cloture rule, which will be discussed in the next portion of this chapter. But the precedents established in the filibusters described here—particularly those of 1879, 1897, and 1908—together with other subsequent precedents, proved as important as the 1917 cloture rule itself in guiding the Senate through future stormy seas of filibusterism.

The Cloture Rule

*March 10, 1981**

Mr. President, one of the greatest changes occurring in the Senate rules between the 1884 codification and the 1979 revision was the emergence and development of the controversial cloture rule. That rule is now contained in paragraph 2 of Rule XXII, and it commands a history unto itself. The origin, development, and evolution of the rule have constituted a long and stormy voyage on the Senate's parliamentary sea.

The practice of limiting debate dates to 1604 when Sir Henry Vane first introduced the idea in the British Parliament. Known in parliamentary procedure as the "previous question," it is described in Section XXXIV of Jefferson's *Manual of Parliamentary Practice* as follows:

> When any question is before the House, any Member may move a previous question, "Whether that question (called the main question) shall now be put?" If it pass in the affirmative, then the main question is to be put immediately, and no man may speak any thing further to it, either to add or alter.[1]

The *Journals of the Continental Congress* record that the previous question was used in 1778. Section 10 of the rules of the Continental Congress read, "While a question is before the House, no motion shall be received, unless for an amendment, for the previous question, to postpone the consideration of the main question, or to commit it." [2]

Both the British Parliament and the Continental Congress used the previous question as a means of preventing discussion of a delicate subject. The Congress of the Confederation, on the practice of which the 1789 Senate drew heavily, specifically declared that the

> previous question . . . shall only be admitted when, in the judgment of two States at least, the subject moved is in its nature, or from the circumstances of time or place improper to be debated or decided, and shall therefore preclude all amendments and farther debates on the subject, until it is decided.[3]

Jefferson, in his *Manual*, written while the 1789 rule was still in effect, stated:

> The proper occasion for the Previous Question is when a subject is brought forward of a delicate nature as to high personages . . . or the discussion of which may call forth observations which might be of injurious consequences. Then the Previous Question is proposed; and in the modern usage, the discussion of the Main (pending) Question is suspended, and the debate confined to the Previous Question. The use of it has been extended abusively to other cases.[4]

The question of whether, in the last analysis, a minority should have the power to prevent legislative action by the majority had been discussed in America long before 1789. Even in the colonial assemblies, various forms of obstruction had been practiced, and the subject was mentioned in the Constitutional Convention.

Roy Swanstrom, in his in-depth study of the Senate's formative years, titled *The United States Senate, 1787–1801*, stated that a committee of the Congress of the Confederation, in 1784, "recommended stringent rules to prevent delays." The adjournment date having been set for June 3, and with much work to be done in the remaining two weeks, the committee recommended that

> *in this instance* the President be authorized to take the following action to speed up business:
>
> To take the sense of Congress with respect to putting any question without debate when he considered it desirable;

* Revised December 1989

To prevent any Member from speaking more than once or longer than the President deemed necessary;

To prevent more than two Members from speaking on one side of any question, and

To finish each day's business regardless of the hour of adjournment.[5]

The *Journals of the Continental Congress* "do not record that the recommendations were adopted," wrote Swanstrom, but they constituted proposals "far more stringent than the Senate was ever to consider." [6]

It is apparent that the Senate in the First Congress disapproved of unlimited debate, since Rule IV provided that "no member shall speak more than twice in any one debate on the same day, without leave of the Senate," and Rule VI provided that "no motion shall be debated until the same shall be seconded." Some senators, however, did resort to delaying tactics in 1789 against legislation providing that the national capital be located on the Susquehanna River.[7]

The next year, the bill to establish the permanent home of the capital again encountered dilatory tactics in both houses. According to Swanstrom, senators who opposed selecting Philadelphia as the capital "tried to spin out the time until the Rhode Island senators could arrive and vote against that site." In the House of Representatives, supporters of Philadelphia were contending with the weather. It was raining when the Philadelphia bill was under consideration in the House. "If the bill passed the House and was sent to the Senate before the rain stopped, its friends believed it would undoubtedly pass; if it reached the Senate after the rain stopped, it would be defeated." This unusual situation was due to the illness of Senator Samuel Johnston, an opponent of the Philadelphia location, who "could not safely be carried to the floor in the rain to vote against the bill, but could and would if the rain had ceased." Swanstrom explained that "the Senate was so evenly divided that the ill Senator's vote could have meant the difference. . . . Supporters of the bill, therefore, tried to push the bill through the House while the rain continued." [8] According to Fisher Ames, a member of the House, Elbridge Gerry of Massachusetts and William Smith of South Carolina thwarted the effort by "making long speeches and motions" which prevented a decision until the next day.[9]

The rules adopted by the United States Senate in April 1789 included a motion "for the previous question." According to historian George H. Haynes, when Vice President Aaron Burr delivered his farewell address to the Senate in March 1805, he "recommended the discarding of the previous question," because, in the preceding four years during which he had presided over the Senate, it had "been taken but once, and then upon an amendment." When the rules were codified in 1806, reference to the previous question was omitted, since it had been used only ten times during the years from 1789 to 1806, and it has never been restored.[10]

In 1807, the Senate forbade debate on an amendment at the third reading of a bill—the last action it took to limit debate until 1846. Henry Clay, in 1841, proposed the introduction of the "previous question" but abandoned the idea in the face of opposition. When the Oregon bill was being considered in 1846, a unanimous consent agreement was used as a way to limit debate by setting a date for a vote. Such agreements are now often used to set the time for a Senate vote on a measure, without further debate, as well as to limit debate on amendments, appeals, debatable motions, and points of order if submitted to the Senate.

When Senator Stephen Douglas proposed permitting the use of the "previous question" in 1850, the idea encountered substantial opposition and was dropped.[11]

During the third session of the Forty-first Congress, in December 1870, Senator Henry

Anthony of Rhode Island introduced, and the Senate approved, the following resolution aimed at expediting business:

> On Monday next, at one o'clock, the Senate will proceed to the consideration of the Calendar, and bills that are not objected to shall be taken up in their order; and each Senator shall be entitled to speak once, and for 5 minutes only, on each question; and this order shall be enforced daily at one o'clock 'till the end of the Calendar is reached.

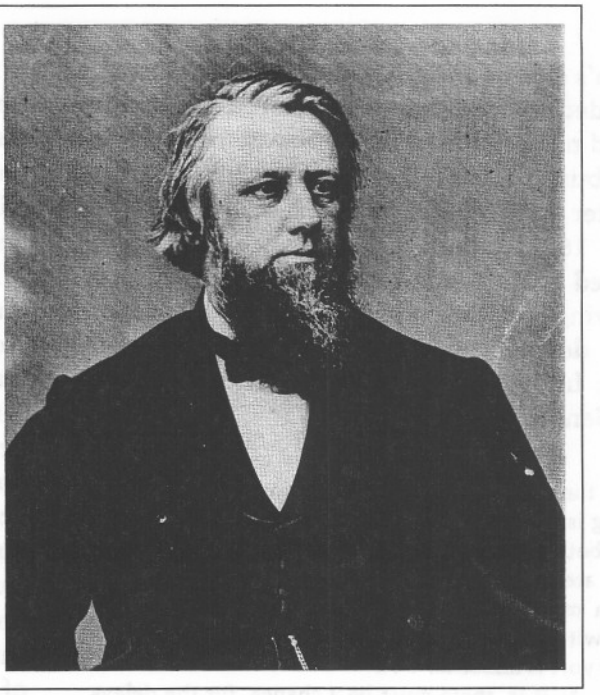
Before adopting the so-called Anthony Rule, an important step in limiting debate, the Senate agreed to an amendment by Senator John Sherman of Ohio, adding at the end, "unless upon motion the Senate should at any time otherwise order." [12]

An effort to reinstitute the "previous question," on March 19, 1873, failed by a vote of 25 to 30.

On February 5, 1880, the Anthony Rule became Rule VIII of the standing rules of the Senate. In 1882, the Senate amended the rule, so that, if the majority decided to take up a bill on the calendar after objection was made, the measure would be subject to the ordinary rules of debate without limitation.

When Rules Committee Chairman William Frye of Maine reported a general revision of the Senate rules in 1883, the package included a provision for the "previous question," but it was eliminated by amendments in the Senate.[13]

On March 17, 1884, the Senate agreed to the following amendment to the rules: "The Presiding Officer may at any time lay, and it shall be in order at any time for a Senator to move to lay, before the Senate any bill or other matter sent to the Senate by the President or the House of Representatives, and any question pending at that time shall be suspended for this purpose. Any motion so made shall be determined without debate." [14]



Senator Henry Anthony introduced a rule in 1870 to limit debate. *U.S. Senate Historical Office*

Between 1884 and 1890, fifteen different resolutions were offered to amend the rules regarding limitations of debate, all of which failed of adoption. In December 1890, when the Senate was filibustering Massachusetts Representative Henry Cabot Lodge's so-called Force bill, dealing with federal elections, Senator Nelson Aldrich of Rhode Island introduced a cloture resolution that stated:

> When any bill, resolution, or other question shall have been under consideration for a considerable time it shall be in order for any Senator to demand that debate thereon be closed. On such demand no debate shall be in order, and pending such demand no other motion except one motion to adjourn shall be made. If such demand be seconded by a majority of the Senators present, the question shall forthwith be taken thereon without debate.[15]

According to a history of the cloture rule published by the Senate Rules Committee, five test votes were taken on Senator Al-

drich's cloture proposal, and the votes "commanded various majorities, but in the end it could not be carried in the Senate because of a filibuster against it which merged into a filibuster on the 'force bill.' " [16]

In 1893, Henry Cabot Lodge, who had moved to the Senate that year, expressed his growing frustration over the delay, by excessive debate, on legislation he considered vital. In an article entitled "The Struggle in the Senate," Lodge wrote:

> Of the two rights (of debating and voting) that of voting is the higher and more important. We ought to have both, and debate certainly in ample measure; but, if we are forced to choose between them, the right of action must prevail over the right of discussion. To vote without debating is perilous, but to debate and never vote is imbecile. . . .
>
> . . . As it is, there must be a change, for the delays which now take place are discrediting the Senate, and this is something greatly to be deplored. The Senate was perhaps the greatest single achievement of the makers of the Constitution. It is one of the strongest bulwarks of our system of government, and anything which lowers it in the eyes of the people is a most serious matter. How the Senate may vote on any given question at any given time is of secondary importance, but when it is seen that it is unable to take any action at all the situation becomes of the gravest character. A body which cannot govern itself will not long hold the respect of the people who have chosen it to govern the country. . . .
>
> . . . No minority is ever to blame for obstruction. If the rules permit them to obstruct, they are lawfully entitled to use those rules in order to stop a measure which they deem injurious. The blame for obstruction rests with the *majority,* and if there is obstruction, it is because the majority permit it. The majority to which I here refer is the party majority in control of the chamber.[17]

Lodge would later change his mind. In 1903, he commented on the Senate's rules allowing full and free debate, declaring that he had "much rather take the chances of occasional obstruction than to put the Senate in the position where bills could be driven through under rules which may be absolutely necessary in a large body like the House of Representatives . . . but which are not necessary here." It was Lodge's opinion that "here we should have, minority and majority alike, the fullest possible opportunity of debate." [18]

In 1897, the chair ruled that successive quorum calls could not be ordered unless some business had intervened, opening the way to a discussion of exactly what constituted "intervening business." This issue was finally joined in 1908 during a marathon filibuster led by Robert La Follette, Sr. On that occasion, Senator La Follette broke the previous endurance record by holding the floor for eighteen hours and twenty-three minutes. His accomplishment was made possible through the device of suggesting the absence of a quorum. Each quorum call lasted at least six minutes, giving him the opportunity to seek rest and relief.

On May 29, 1908, with the temperature above ninety degrees in the chamber, La Follette talked on into the night, fortifying himself with turkey sandwiches and eggnog from the Senate restaurant. At one point, he took a sip of eggnog and immediately cast it away, exclaiming that it had been drugged. (Chemical analysis later revealed that the amount of ptomaine in the glass would certainly have killed the Wisconsin senator, but the culprit was never identified.) [19]

After thirty-two roll calls, Senator Nelson Aldrich, whose bill was the target of Senator La Follette's filibuster, raised a point of order, based on the 1897 precedent, to the effect that no business had intervened since the last quorum call. Senator Aldrich argued that debate by itself was not "intervening business." The Senate upheld the point of order, 35 to 8, thereby reversing an 1872 precedent to the contrary. This ruling made it more difficult for La Follette to continue, and his filibuster finally came to an end a few hours later.

Again, in 1915, Utah Senator Reed Smoot set a new one-man record for the longest *continuous* filibuster, speaking for eleven hours and thirty-five minutes without rest and without deviating from the subject at hand. His action was part of a filibuster against the administration's ship purchase bill. The debate consumed thirty-three days and resulted in the failure of three important appropriations bills.[20]

In May 1916, the Committee on Rules reported a resolution providing for cloture by two-thirds of those voting, but the resolution, although debated, did not come to a vote.

In 1916, and again in 1920, the Democratic party's national platforms stated, "We favor such alteration of the rules of procedure of the Senate of the United States as will permit the prompt transaction of the Nation's legislative business." [21]

The final impetus for a cloture rule came as a result of a 1917 filibuster—one of the most famous in Senate annals—against an administration measure permitting the arming of American merchant vessels for the duration of the World War. Actually, this filibuster had been immediately preceded by the delaying tactics of Republicans, whose strategy was to stall the Senate's business and force a special session of Congress. As reported by the *New York Times* on February 23, 1917, "the Republicans in caucus this morning unanimously agreed on a course that means a general filibuster against practically all legislation, so that through the failure of this legislation to reach enactment by March 4 a special session would have to be called."

On the day of the Republican conference, President Woodrow Wilson issued a proclamation calling for a special session of the Senate, to begin at noon on March 5. The Republicans, however, "made it plain that what they wanted was a sitting of both houses," not just the Senate. For the Senate alone to sit in special session would permit only the consideration of treaties and nominations, matters under the Senate's sole jurisdiction. According to the *Times* story, Republican senators "dislike the idea of leaving President Wilson, clothed with large powers, to act for nine months in a great international crisis without legislative advice." [22]

Over the next several days, the Republicans held to the course planned. From February 23 through 28, they debated a revenue bill to defray the increased expenses of the army and navy. Meanwhile, on February 26, President Wilson appeared before a joint session to request legislation authorizing the arming of merchant ships. Referring to the sinking of two American merchant vessels, the *Housatonic* and the *Lyman M. Law*, the president stated:

> No one doubts what it is our duty to do. We must defend our commerce and the lives of our people in the midst of the present trying circumstances, with discretion but with clear and steadfast purpose. . . . Since it had unhappily proved impossible to safeguard our neutral rights by diplomatic means against the unwarranted infringements they are suffering at the hands of Germany, there may be no recourse but to armed neutrality. . . .
>
> . . . I request that you will authorize me to supply our merchant ships with defensive arms, should that become necessary, and with the means of using them, and to employ any other instrumentalities or methods that may be necessary and adequate to protect our ships and our people in their legitimate and peaceful pursuits on the seas. I request also that you will grant me . . . a sufficient credit to enable me to provide adequate means of protection where they are lacking, including adequate insurance against the present war risks.[23]

Debate on the revenue bill continued. Thirty-five roll-call votes occurred between the hours of 10:00 a.m. Wednesday, February 28, and 12:45 a.m. Thursday, March 1, when the bill passed. Thirty-three of these were back-to-back votes beginning at

around eight o'clock on Wednesday evening and continuing over the next four hours and forty minutes.[24]

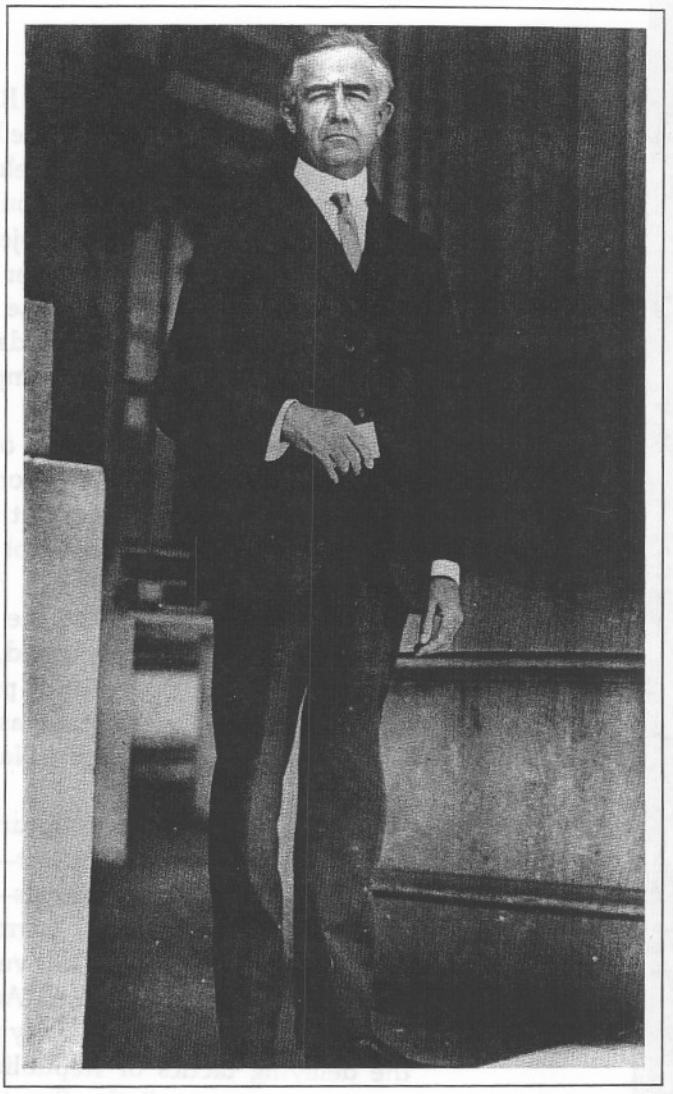
The Republicans ended their obstructionist tactics on March 1, following a prolonged reading of the *Journal*. According to Franklin L. Burdette, an expert on Senate filibusters, it was claimed publicly that "patriotic motives had prevailed to bring an end to dilatory tactics; but a skeptic in politics may wonder whether the regular Republicans had not simply realized that their filibuster would be conveniently assumed by other tongues." [25]

Later that day, Senator Henry Cabot Lodge of Massachusetts referred to an Associated Press news story reporting "a dispatch from the secretary of state for foreign relations in Germany inviting Mexico and Japan to unite with them in war upon the United States." Lodge introduced a resolution, requesting the president to inform the Senate whether the note signed "Zimmermann" referred to in the newspapers was "authentic" and calling on Wilson to supply the Senate with any other information "relative to the activities of the Imperial German Government in Mexico." [26]

News of the astounding and provocative German message electrified the country, and a wave of indignation swept the land, building strong popular support for action.

On March 2, the Senate began debating the Senate bill that had been reported from the Foreign Relations Committee, authorizing the president to supply American merchant ships with defensive arms. Because Senator William J. Stone, chairman of the committee, opposed the bill, he asked Senator Gilbert M. Hitchcock of Nebraska to act as its floor manager. The bill had less than forty-eight hours in which to pass or it would die with the session's end at noon on March 4.[27]

Senators George W. Norris of Nebraska, Asle J. Gronna of North Dakota, Robert M. La Follette of Wisconsin, and other opponents feared that if the legislation became law it would lead the country into war. The debate went on past midnight, and, at 12:40 a.m. on March 3, the Senate recessed until 10 a.m. the same day, when the debate was renewed. It raged furiously through the afternoon and night, right up to the stroke of noon on March 4, when the Senate adjourned sine die. Opponents of the armed merchant ship bill did not resort to dilatory



In 1917, Senator Gilbert M. Hitchcock led the fight for the Armed Ship bill, which was blocked by a Senate filibuster. *U.S. Senate Historical Office*

tactics to defeat the legislation. Only one roll-call vote and six quorum calls interrupted the debate during the twenty-six-hour session.

Senator Stone, in opposing the bill, questioned its constitutionality:

> The Constitution vests the war-making power alone in the Congress. It is a power the Congress is not at liberty to delegate. . . . I believe this law would contravene the Constitution. . . . The power to be granted [to the president] is granted in terms too broad, too sweeping. . . . No limit whatsoever is placed upon the "instrumentalities and methods" that the President may employ, and no direction whatsoever is given by Congress as to the manner in which this authority may be exercised. The President would be given an absolutely free hand to employ any instrumentality and to adopt any method he saw fit.[28]

Stone spoke for four hours against the bill. As the evening wore on, Senator Hitchcock sought in vain to obtain unanimous consent to vote at a given hour. He sought consent to limit speeches to fifteen minutes "beginning at 9 o'clock," "at 10 o'clock," "at midnight," "at 1 o'clock," "at 2 o'clock in the morning," "at 4 o'clock in the morning," but each time, his request was met with an objection. Finally, in exasperation, he stopped trying, saying: "Mr. President, I am not going to do anything here to kill time. I want to develop the fact that there is a deliberate intention to filibuster the bill to death. If Senators are willing to take that responsibility I want them to take it." Senator George Norris retorted that he "would not hesitate to kill the bill" if he could. "But the fact is," he said, "that most of the time has been taken up by those who favor the bill." Norris objected "to having the debate run on for a couple of days by those who are in favor of the bill and then an effort be made to gag those who are opposed to it. . . . I do object to a limitation of any kind." [29]

Invective flowed freely as the angry majority tried to silence the small but unsubmissive band of opposition senators, who accused the measure's supporters of monopolizing the time. Senator Wesley L. Jones of Washington referred to "the apparent filibuster that seems to have been carried on by those who profess to be friends of the bill. The Senator [Mr. Hitchcock] in charge of it wasted half an hour's time, that anybody might have known would be wasted, in trying to reach an agreement to limit debate and to vote. . . . the passage of this measure should not be hurried." [30]

At 3:20 a.m. on March 4, Senator Hitchcock asked Senator Joseph T. Robinson of Arkansas to present a statement for the *Record* "to show that nine-tenths of the Senate are ready to vote and anxious to vote and want to vote for this bill, but that they are being prevented by 12 Senators . . . who refuse us an opportunity to vote." When Robinson presented the statement, signed by seventy-five senators favoring the bill, Minnesota Senator Moses E. Clapp responded angrily,

> I think it is unfair and unjust to men who have no purpose to delay this bill, who have sat here for over 24 hours seeking to get an opportunity to make a fair speech upon this question, to put them in the attitude of being responsible for delaying the bill, when the fact is we have not had an opportunity to speak upon the bill.

Clapp accused the majority party of displacing the bill "time and again" since it came "into the Senate Friday afternoon," thus denying senators the opportunity "of presenting their views to the Senate and to the country." [31] In his opinion, the bill represented "a step along that pathway which has wrecked every great republic." In fact, the nation was "so thoroughly today in the hands of commercialism that we propose to lend ourselves to a war for commercialism." [32]

Senator Harry Lane of Oregon deplored the "round robin," which had been signed

Senator George Norris helped to filibuster the 1917 Armed Ship bill. *U.S. Senate Historical Office*

by seventy-five senators. In his opinion, the statement had "caused a good deal of bitterness" and "left a bad taste in the mouths of some of those who signed it, as well as those who did not sign it," since its purpose was "to coerce" senators into supporting the legislation.[33]

Senator Norris gained the floor at 7:45 a.m. on March 4. Rejecting the charge that a filibuster was in progress, he stated: "[I]t seems to me it comes with poor grace to say, 'You are filibustering,' when the very means used in a filibuster have never been resorted to. You have had at least a dozen unanimous-consent agreements to expedite business during the night." Noting that there were "just five Senators on the Democratic side of the Chamber," Norris asserted, "if there were a filibuster . . . the Sergeant at Arms would be scurrying around over the city, arresting Senators and bringing them in here. . . ." "Everybody concedes" an extra session to be "absolutely necessary," Norris declared, asking, "what is the great importance of hasty action on this legislation?"[34]

Expressing opposition to the bill, Norris said, "it abdicates our power; it gives to the President in effect the right to make war. . . . Do we want to surrender to the Executive the power that is ours under the Constitution?" Norris then quoted from *Constitutional Government: A Study in American Politics*, by none other than Woodrow Wilson himself:

> Members of Congress ought not to be censured too severely, however, when they fail to check evil courses on the part of the Executive. They have been denied the means of doing so promptly and with effect. . . .

It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees.

Quoting further from Wilson's doctoral dissertation, Norris drove home the necessity for thorough discussion within the legislative body:

Unless Congress have and use every means of acquainting itself with the acts . . . of the administrative agents of the Government, the country must be helpless to learn how it is being served; and unless Congress both scrutinize these things and sift them by every form of discussion the country must remain in embarrassing, crippling ignorance of the very affairs which it is most important that it should understand and direct.[35]

As the hours of morning wore on, the filibuster shifted from the opposition to the proponents of the bill. With the noon hour approaching, Hitchcock sought to secure unanimous consent for a vote, but La Follette, who had been unable to get the floor, vowed to object to a vote until he was allowed to speak. According to Franklin Burdette, angry Democrats, realizing the futility of trying to reach a vote, "determined to talk themselves rather than give [La Follette] an opportunity to speak before crowded galleries in the final hours of the session."[36] At 11:43 a.m., Hitchcock made one final request to vote at 11:45. When La Follette objected, Hitchcock put in a quorum call to chew up additional time. The few remaining minutes of the session were spent in wrangling, with Hitchcock obstinately holding the floor against La Follette's vigorous protests. The clock struck twelve, the session ended, and the Armed Ship bill was dead.[37]

The bill's failure stimulated a great public outcry, which associated the Senate's right to free and unlimited debate with treason. President Wilson, on March 4, 1917, angrily responded to the Senate's action by making one of the most notable of presidential attacks on the Senate and its procedures. He said, in part:

The termination of the last session of the Sixty-fourth Congress by constitutional limitation discloses a situation unparalleled in the history of the country, perhaps unparalleled in the history of any modern government. In the immediate presence of a crisis fraught with more subtle and far-reaching possibilities of national danger than any other the government has known within the whole history of its international relations, the Congress has been unable to act either to safeguard the country or to vindicate the elementary rights of its citizens. More than five hundred of the five hundred and thirty-one members of the two houses were ready and anxious to act; the House of Representatives had acted by an overwhelming majority; but the Senate was unable to act because a little group of eleven Senators had determined that it should not.

The Senate has no rules by which debate can be limited or brought to an end, no rules by which dilatory tactics of any kind can be prevented. A single member can stand in the way of action if he have but the physical endurance. The result in this case is a complete paralysis alike of the legislative and of the executive branches of the government.

The inability of the Senate to act has rendered some of the most necessary legislation of the session impossible, at a time when the need for it was most pressing and most evident. . . . It would not cure the difficulty to call the Sixty-fifth Congress in extraordinary session. The paralysis of the Senate would remain. . . . The Senate cannot act unless its leaders can obtain unanimous consent. Its majority is powerless, helpless. . . .

Although as a matter of fact, the nation and the representatives of the nation stand back of the Executive with unprecedented unanimity and spirit, the impression made abroad will, of course, be that it is not so and that other governments may act as they please without fear that this government can do anything at all. We cannot explain. The explanation is incredible. The Senate of the United States is the only legislative body in the world which cannot act when its majority is ready for action. *A little group of willful men*, representing no opinion but their own, have rendered the great government of the United States helpless and contemptible.

The remedy? There is but one remedy. The only remedy is that the rules of the Senate shall be so altered

that it can act. The country can be relied upon to draw the moral. I believe the Senate can be relied on to supply the means of action and save the country from disaster.[38]

Even before the filibuster which killed the Armed Ship bill, the president had planned to call the Senate into special session to deal with a pending treaty. Nonetheless, when the Senate met in extraordinary session the day following Wilson's inauguration, there was only one item of business on its members' minds: the cloture rule. Professor Thomas W. Ryley in his book, *A Little Group of Willful Men*, noted that, at the time, most senators did not want to undermine the filibuster, as many of them had taken advantage of it in the past, but "with an aroused public, there was almost as much resentment over the filibuster as there was over the fact that American rights had not been defended to the utmost." According to Ryley, when the president announced that the rules of the Senate would have to be revised before he would call a special session of the entire Congress to deal with the war emergency, "the fate of unlimited debate was sealed." [39]

The principal responsibility for the cloture resolution rested with the new Democratic majority leader, Thomas Martin of Virginia. Under his guidance, a bipartisan committee of the Senate's leaders drew up a proposal providing that a vote by two-thirds of those present and voting could invoke cloture on a pending measure. Under the new rule, cloture would begin with submission of a petition signed by sixteen members, followed two days later by a vote. If the requisite two-thirds approved the proposal, each senator could thereafter speak for a maximum of one hour, and no amendments could be made except by unanimous consent. Even if this rule had been in effect at the time of the Armed Ship bill filibuster, however, it could not have saved the measure, for the amount of time required under the procedure was greater than that remaining in the life of that Congress.

It was clear from the beginning of the March 1917 debate that the rule would pass by an overwhelming margin. But, as Burdette observed, senators were wary and cautious. "Public outcry against the Armed Ship filibuster might change the precedents of more than a century, but it should not be allowed to sweep them altogether away. Free speech in the Senate should still be the rule and cloture the exception." There were those who advocated cloture by a majority, but they were overridden by Democrats and Republicans who desired a more prudent change in the rules governing unlimited debate. Senate leaders would act to "curb filibustering, but drastic action they would not support." [40]

I think it is useful, in light of subsequent developments and considering the overstated nature of President Wilson's attacks on the Senate, to look at the arguments of the proposed rule's three lone opponents.

Illinois Senator Lawrence Sherman had been an avowed supporter of the Armed Ship bill. He took the position, nonetheless, that President Wilson's attack was unfair. On March 8, 1917, he declared: "There is in the memory of no person now having a seat in the Senate, delayed action or a filibuster which destroyed meritorious legislation, save during the last few weeks of the short (second) session, when Congress automatically adjourns on the succeeding fourth day of March of that year. . . . There is a limitation," he continued, "where mere exhaustion applies the cure. It is always in the power of the Senate to apply the remedy by continuous sessions, except the last few days named." Sherman argued that the rules were to be made "the scapegoat for the deficiencies of human nature," and that their amendment had been raised "solely for the purpose

of breaking down the rule of the Senate and riveting Executive control on the Senate as firmly as on the House." Senator Sherman's basic point was that, if the administration had sent the bill in "due time, it would not have been possible," in his words, "for those senators to have defeated it by delaying a roll call until the adjournment." [41]

A second opponent, Senator La Follette, also took issue with the practice of holding important bills, such as appropriations measures, in committee until the eleventh hour in order to build up pressure for their speedy and uncritical consideration and passage. As the debate on the cloture rule was drawing to a close, La Follette presented a classic statement in defense of unlimited debate. He argued:

> Mr. President, believing that I stand for democracy, for the liberties of the people of this country, for the perpetuation of our free institutions, I shall stand while I am a Member of this body against any cloture that denies free and unlimited debate. Sir, the moment that the majority imposes the restriction contained in the pending rule upon this body, that moment you will have dealt a blow to liberty, you will have broken down one of the greatest weapons against wrong and oppression that the Members of this body possess. This Senate is the only place in our system where, no matter what may be the organized power behind any measure to rush its consideration and to compel its adoption, there is a chance to be heard, where there is opportunity to speak at length, and where, if need be, under the Constitution of our country and the rules as they stand today, the constitutional right is reposed in a Member of this body to halt a Congress or a session on a piece of legislation which may undermine the liberties of the people and be in violation of the Constitution which Senators have sworn to support. When you take that power away from the Members of this body, you let loose in a democracy forces that in the end will be heard elsewhere, if not here.[42]

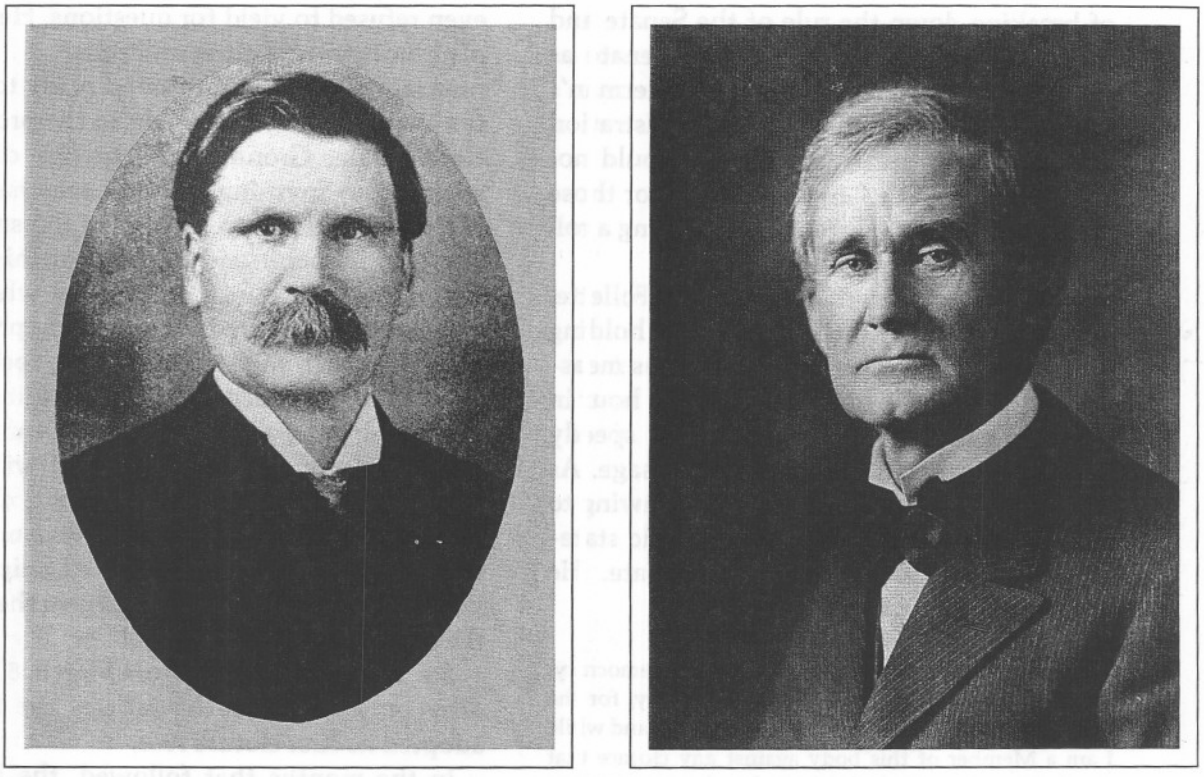
The third opponent, Senator Asle Gronna, complained that he had not been afforded the opportunity to speak on the Armed Ship bill. "The Senator [Hitchcock] having that bill in charge took up nearly all the time and even refused to yield for questions. He occupied an hour and three-quarters . . . in denunciation of those who stood ready to carry out their honest beliefs." As to the proposed cloture rule, Gronna said that he did not wish "to do anything that will even have the slightest tendency to destroy in the smallest degree the liberty and freedom of this great Government of ours," concerning which he passionately declared, "too much precious blood has been shed to establish it; too many lives were sacrificed to perpetuate it; and I shall not by any act of mine do anything that will cause any disturbance or that will have the least tendency to destroy it as a democracy." Referring to those who spoke unkindly of the opponents of the Armed Ship legislation, Gronna exclaimed, "Forgive them, for they know not what they do!" [43]

By a vote of 76 to 3, on March 8, 1917, after only six hours of debate, the Senate adopted its first cloture rule.

In the months that followed, the United States entered World War I, and, during the second session of the Sixty-fifth Congress, the Senate broke all previous records by remaining in session for 354 days between December 1917 and the following November. By the time the war had ended in November 1918, it was becoming clear that the cloture rule was not going to be effective. Several months earlier, Senator Oscar Underwood of Alabama, soon to become the Democratic floor leader, introduced a resolution reestablishing the use of the "previous question" and limiting debate during the wartime period. The Rules Committee favorably reported the Underwood resolution, but it failed of passage by a vote of 34 to 41.

A year later, on November 15, 1919, the Senate adopted its first cloture motion and, four days later, brought to an end the fifty-five-day debate on the Treaty of Versailles.

In the years that followed, however, cloture was used only sparingly. From 1919

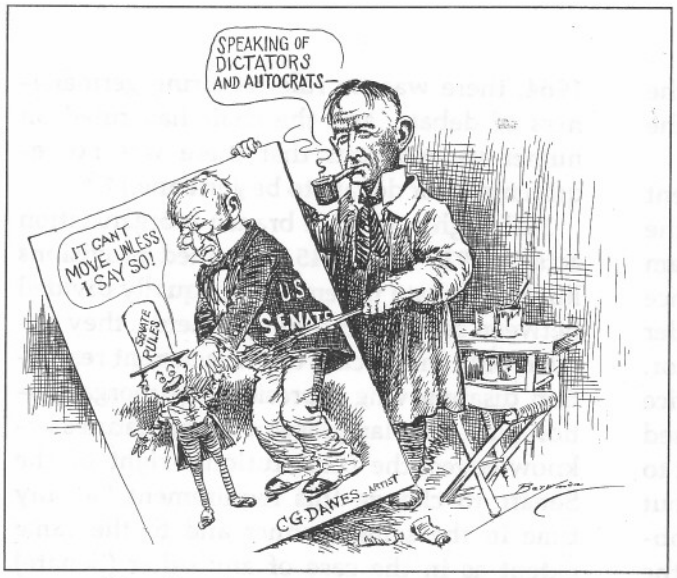


Senators Asle Gronna, *left*, and Lawrence Sherman, *right*, opposed adoption of the Senate's cloture rule.
State Historical Society of North Dakota and Library of Congress

through 1962, the Senate voted on cloture petitions on twenty-seven occasions and invoked cloture just four times.

On November 29, 1922, the Senate's Republican whip, Charles Curtis of Kansas, tried a new approach to limit debate. In the midst of a four-day filibuster against an antilynching bill, Democratic Leader Underwood, who supported that filibuster, moved to adjourn immediately upon the convening of the Senate. Curtis then raised a point of order that the motion was dilatory. He said, "I know we have no rule of the Senate with reference to dilatory motions. We are a legislative body, and we are here to do business and not retard business." He then observed that "it is a well-settled principle that in any legislative body where the rules do not cover questions that may arise, general parliamentary rules must apply." He argued that in the House, Speaker Reed had ruled, in the absence of rules to the contrary, that dilatory motions were out of order. Vice President Calvin Coolidge, in the chair at the time, declined to rule on Curtis' specific point of order. Today, except in cases where the Senate is operating under the cloture rule, the rules and precedents do not specifically prohibit dilatory motions as such.[44]

One of the most notable of the earlier campaigns to devise an effective debate limitation rule began here in the Senate chamber on March 4, 1925. The occasion was the inaugural address of the new vice president, Charles Dawes. By that time, Dawes had already earned a reputation as an effective administrator due to his successful banking career and his service as the first director of



Vice President Charles Dawes in 1925 pressed for stricter Senate rules to control debate.
Library of Congress

the Budget Bureau. A man of commanding personality, the vice president was often called by his campaign nickname of "Hell an' Maria," one of his favorite expressions. During his term of office, Dawes participated more actively in the Senate's business than most of his predecessors.

Vice President Dawes began his activist role with a statement that shocked the assembled senators. He told them that it was his duty as their presiding officer "to call attention to defective methods in the conduct of (the Senate's) business." Accordingly, he observed that the existing cloture rule, "which at times enables Senators to consume in oratory those last precious minutes of a session needed for momentous decisions, places in the hands of one, or of a minority of senators, a greater power than the veto power exercised under the Constitution by the President of the United States, which is limited in its effectiveness by the necessity of an affirmative two-thirds vote." Filled with indignation, the vice president assaulted his audience with a barrage of rhetorical questions: "*Who would dare*," he asked:

> to contend that under the spirit of democratic government the power to kill legislation providing the revenues to pay the expenses of government should, during the last few days of a session, ever be in the hands of a minority, or perhaps one senator? . . . *Who would dare* oppose any changes in the rules necessary to insure that the business of the United States should always be conducted in the interests of the Nation and never be in danger of encountering a situation where one man or a minority of men might demand unreasonable concessions under threat of blocking the business of the Government? *Who would dare* maintain that in the last analysis the right of the Senate itself to act should ever be subordinated to the right of one senator to make a speech? [45]

On the following day, Senator Underwood introduced a resolution to replace the 1917 cloture rule. The proposed provisions, which harkened back to the original 1789 rule on the "previous question," were as follows:

> 1. There shall be a motion for the previous question which, being ordered by a majority of Senators voting, if a quorum be present, shall have the effect to cut off all debate and bring the Senate to a direct vote upon the immediate question or questions on which it has been asked and ordered. The previous question may be asked and ordered upon a single motion, a series of motions allowable under the rules, or an amendment or amendments, or may be made to embrace all authorized motions or amendments and include the bill to its passage or rejection. It shall be in order, pending the motion for, or after the previous question shall have been ordered on its passage, for the Presiding Officer to entertain and submit a motion to commit, with or without instructions, to a standing or select committee.
>
> 2. All motions for the previous question shall, before being submitted to the Senate, be seconded by a majority by tellers, if demanded.
>
> 3. When a motion for the previous question has been seconded, it shall be in order, before final vote is taken thereon, for each Senator to debate the propositions to be voted upon for one hour.[46]

To build support for his reform campaign, Vice President Dawes set out on a cross-country tour. In the spirit of his great-great-grandfather, William Dawes, who rode with Paul Revere on that fateful night in 1775 to warn of the impending arrival of British

troops, Charles Dawes sought to sound the alarm against the dangers he perceived in the Senate's rules.

At one stop, in Boston, the vice president addressed a gathering on this subject. In the presence of Massachusetts Senator William Butler, he asked that those in the audience who favored a rules change stand up in order to make their views known to their senator. As the supportive cheers died down, the vice president literally pulled the embarrassed senator from his chair, exclaiming, "I want to hear what Senator Butler has to say about this." The freshman senator quickly observed that he was in favor of a reform of the Senate's rules, particularly the seniority rule.[47]

Several weeks later, Vice President Dawes announced that he intended to take his campaign to Kansas, home of Senate Republican floor leader Charles Curtis. There he promised to hold a "monster mass meeting," and he expressed the hope that the senator would be present to see his constituents "react." Senator Curtis, who was also chairman of the Rules Committee, told a reporter that he thought the Dawes-Underwood proposal stood little chance, even though he was willing to support it. Recalling his own earlier efforts to achieve majority or three-fifths cloture, Senator Curtis reminded the vice president that he had been able to find only two other Republican senators willing to join him in support of such a proposal. The Kansas senator correctly predicted that the Dawes campaign would fail.[48]

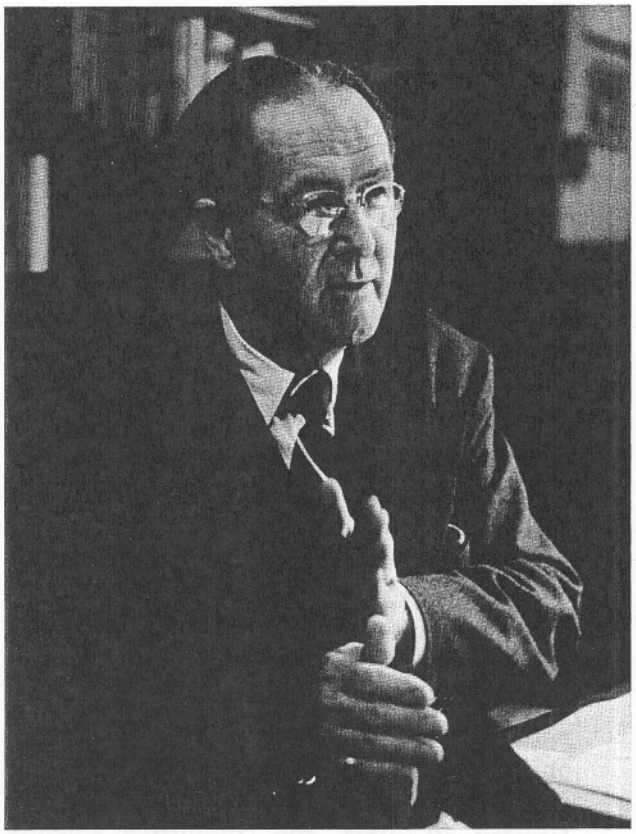
Later in 1925, Democratic Leader Joseph Robinson, joining members on both sides of the aisle, argued that no change in the rules was "necessary to prevent irrelevant debate." He noted that general parliamentary practice "contemplates that a speaker shall limit his remarks to the subject under consideration," and he called on the chair to require that debate be germane. (Prior to 1964, there was no rule requiring germaneness of debate, and the chair had ruled on numerous occasions that there was no requirement for debate to be germane.)[49]

Although executive branch reorganization acts in 1939 and 1945 contained provisions limiting debate to ten hours, equally divided between supporters and opponents, they applied only in the case of a concurrent resolution disapproving a presidential reorganization plan. The language of those statutes acknowledged the constitutional right of the Senate to change this requirement "at any time in the same manner and to the same extent as in the case of any other (Senate) rule." Later extensions of the Reorganization Act included similar limitations on debate.

By 1948, a series of rulings over the years had rendered the 1917 cloture rule almost worthless, particularly those rulings that held that it could not be applied to debate on procedural questions. On August 2 of that year, President pro tempore Arthur Vandenberg sustained a point of order against a petition to close debate on a motion to consider an anti-poll-tax bill. In doing so, he declared that, in the final analysis, the Senate had no cloture rule at all. He noted that "a small but determined minority can always prevent cloture under the existing rules." At that point, the Republican Conference appointed a committee of ten senators to recommend revision of the existing cloture rule.[50]

In 1949, control of the Senate returned to the Democratic party. Fresh from his surprise election victory, President Harry S. Truman sought to clear the way for a broad civil rights program, and his first step was to push for a liberalization of the cloture rule. His efforts produced a bitter battle at the beginning of the Eighty-first Congress.

After lengthy hearings in the Rules Committee, the majority leader, Scott Lucas of Illinois, moved on February 28 to take up the resolution. This action set off a filibuster



Senator Clinton Anderson contended that the Senate had the right to adopt a new set of rules at the beginning of each Congress. *Library of Congress*

which ran until March 15, when it was voluntarily halted. After three days of further debate, the Senate adopted a compromise measure that proved to be less usable than the one it replaced. It required that two-thirds of the *entire* Senate vote for cloture, rather than two-thirds of those present and voting. The new rule differed from the old in that it allowed cloture to operate on any pending business or motion with the exception of debate on motions to change the Senate rules themselves. Previously, the cloture rule had been applicable to those motions. This meant that future efforts to change the cloture rule would themselves be subject to extended debate without benefit of the cloture provision. Previously, under the old rule, debate limitation on a rules change had at least been theoretically possible. This change led critics of the revised rule to develop a new strategy, which became apparent in 1953, at the beginning of the Eighty-third Congress.

At the opening of that Congress, opponents of unlimited debate argued that the Senate was not a continuing body. According to the Rules Committee's history of the cloture rule, they relied on a claim by Montana Senator Thomas Walsh in 1917 that "each new Congress brings with it a new Senate, entitled to consider and adopt its own rules." They planned "to move for consideration of new rules on the first day of the session and, upon the adoption of this motion, to propose that all the old rules be adopted with the exception of Rule XXII. Rule XXII was to be changed to allow a majority of all senators (49) to limit debate after 14 days of discussion." On January 3, 1953, Senator Clinton Anderson of New Mexico moved that the Senate begin considering the adoption of rules for the Senate of the Eighty-third Congress. Ohio Senator Robert Taft moved to table the Anderson motion. During the ensuing debate, Senator Paul Douglas of Illinois explained the advantages of the Anderson proposal over the existing system. He pointed out that the 1949 rule "ties our hands once the Senate is fully organized. . . . For under it any later proposal to alter the rules can be filibustered and never be permitted to come to a vote. . . . Therefore, if it be permanently decided that the rules of the preceding Senate apply automatically as the new Senate organizes, we may as well say farewell to any chance either for Civil Rights legislation or needed changes in Senate procedure." [51]

Opponents of the Anderson motion contended that the Senate is a "continuing body," bound by the rules of earlier Senates. To support their argument, they pointed out:

(1) Only one-third of the Senate is elected every two years.

(2) The Constitution did not provide for the adoption of new rules every two years.

(3) If the Senate had had the power to adopt new rules, it had lost that power through disuse.

(4) The Supreme Court . . . had decided that the Senate was a "continuing body."

The Anderson motion was finally tabled by a vote of 70 to 21, on January 7, 1953.[52]

On January 3, 1957, Senator Anderson moved, at the beginning of the Eighty-fifth Congress, to consider the adoption of new rules. On a motion by Senate Majority Leader Lyndon Johnson, the Anderson motion was tabled by a roll-call vote of 55 to 38. During the debate, however, Vice President Richard Nixon said that, in "the opinion of the Chair," although the Senate rules had been continued from one Congress to another, "the right of a current majority of the Senate at the beginning of a new Congress to adopt its own rules . . . cannot be restricted or limited by rules adopted by a majority of the Senate in a previous Congress." He said that, in his opinion, the current Senate could not be bound by any previous rule "which denies the membership of the Senate the power to exercise its constitutional right to make its own rules." Nixon stated his belief that the section of Rule XXII forbidding limitation of debate on proposals to change the rules was unconstitutional. He noted, however, that only the Senate could officially determine the constitutionality of the rule.[53]

During the Eighty-fifth Congress, in 1957 and 1958, eight resolutions were introduced to amend the cloture rule. At the beginning of the Eighty-sixth Congress, Senate Majority Leader Johnson offered, and the Senate adopted by a 72 to 22 roll-call vote, a resolution to amend Senate Rule XXII. Approved on January 12, 1959, after four days of debate, the resolution permitted two-thirds of the senators present and voting to close debate, even on proposals for rules changes. It also added to Rule XXII, "The rules of the Senate shall continue from one Congress to the next Congress unless they are changed as provided in these rules." [54]

As a way to expedite business, the Senate, in 1964, adopted a requirement that debate be germane to the business before the Senate during certain hours of each day's session. Known today as the "Pastore Rule," this important innovation was proposed in a resolution introduced on February 19, 1963, by Senator John O. Pastore of Rhode Island. The Rules Committee held hearings and reported the resolution with amendments reducing the period of germane debate from four hours to three, limiting the germaneness requirement to only one period "on any calendar day," and preserving the practice of permitting nongermane amendments (except on appropriation bills, which continued to require amendments to be germane).[55] On January 10, 1964, the committee amendments were adopted en bloc without debate. That same day, Senator Pastore offered an amendment, which was agreed to, clarifying his intent that the resolution apply only to debate and not to the germaneness of amendments. He explained the need for some limitation on free-wheeling debate, saying:

It is incompatible with orderly, constructive procedure for a Senator who happens to have prepared a press release which he wishes to make public, in order to meet the newspaper deadlines, to proceed, in the Senate Chamber, to recite and discuss his press release while many other Senators wait to participate in the debate on the business pending before the Senate. Sometimes such interruptions occur hour after hour, while individual Senators talk about many other subjects, ranging perhaps from the price of eggs to conditions on the Great Lakes.[56]

Senator Everett Dirksen of Illinois was among those senators who opposed the rules

change. His concern was shared by several of his colleagues, when he said that he had "great pride in the freedom of expression in the Senate" and that, if the adoption of the resolution did not "bring about what its sponsors hope it will achieve," they would "seek further modification of the rules in order to bring it about." The resolution was adopted, as amended, on January 23, 1964, by a vote of 57 to 25.[57]

Today, the provision constitutes paragraph 1(b) of Rule XIX of the standing rules. Although it has not had the effect on Senate debate that either its proponents had hoped or its detractors had feared, it, nevertheless, represented a useful change in the rules.

Efforts to amend the cloture rule failed again in the Eighty-eighth and Eighty-ninth congresses. On January 11, 1967, Senator George McGovern of South Dakota introduced a resolution providing for three-fifths of the senators present and voting to end debate. According to the Senate's published history of the cloture rule:

> On January 18, Senator McGovern proposed that the Senate immediately vote to end debate on the motion to consider his resolution and if a majority vote occurred, the Senate would then debate the resolution itself. Mr. McGovern justified this procedure by arguing that the Senate under the Constitution could at the beginning of a new session, adopt new rules by a majority vote. Senator Dirksen raised a point of order against the McGovern motion. . . .
>
> Supporters of McGovern had hoped for a favorable ruling from Vice President Humphrey, but Humphrey stated: ". . . the precedent, . . . namely, that the Chair has submitted constitutional questions to the Senate for its decision—the Presiding Officer believes to be a sound procedure. It has not been considered the proper role of the Chair to interpret the Constitution for the Senate. Each Senator takes his own obligation when he takes his oath of office to support and defend the Constitution. The Presiding Officer is aware of no sufficient justification for reversing this procedure."
>
> Humphrey then asked the Senate if the point of order should be sustained. He also said this question was debatable but subject to a tabling motion, which is not debatable; whereupon McGovern moved to table the Dirksen point of order.[58]

According to the vice president, if the Senate had adopted the tabling motion, it would have acknowledged that the McGovern motion was constitutional, meaning that the Senate had the right to adopt new rules by majority vote at the beginning of a new Congress. The Senate, however, rejected McGovern's tabling motion by a 37 to 61 roll-call vote and then sustained Dirksen's point of order by a 59 to 37 roll-call vote. The Senate thus determined that McGovern's motion was unconstitutional. A subsequent attempt to invoke cloture failed.[59]

At the opening of the Ninety-first Congress, in 1969, those who sought to alter Rule XXII tried a different approach. Senators Frank Church of Idaho and James Pearson of Kansas introduced a resolution providing that cloture could be invoked by three-fifths, rather than two-thirds, of those present and voting. In order to succeed, their plan would need a ruling by Vice President Humphrey that cloture required only a simple majority when a rules change was being considered at the opening of a new Congress. On January 14, 1969, following the procedure outlined in Rule XXII, Senator Church and twenty-four other senators filed a cloture motion on the motion to consider the resolution. Senator Church then asked the chair whether a cloture vote by a majority of the senators present and voting—but less than the two-thirds required by Rule XXII—would be sufficient.

Church contended that requiring a two-thirds vote for cloture on a rules change was unconstitutional, because it restricted the right of a majority of the Senate, under the Constitution, to determine its rules at the beginning of a new Congress.

The vice president agreed, declaring, "On a par with the right of the Senate to deter-

mine its rules, though perhaps not set forth so specifically in the Constitution, is the right of the Senate, a simple majority of the Senate, to decide constitutional questions." Humphrey continued:

> If a majority . . . but less than two-thirds, of those present and voting, vote in favor of this cloture motion, the question whether the motion has been agreed to is a constitutional question. The constitutional question is the validity of the Rule XXII requirement for an affirmative vote by two-thirds of the Senate before a majority of the Senate may exercise its right to consider a proposed change in the rules. If the Chair were to announce that the motion for cloture had not been agreed to because the affirmative vote had fallen short of the two-thirds required, the Chair would not only be violating one established principle by deciding the constitutional question himself, he would be violating the other established principle by inhibiting, if not effectively preventing, the Senate from exercising its right to decide the constitutional question. . . .
>
> . . . the Chair informs the Senate that in order to give substance to the right of the Senate to determine or change its rules and to determine whether the two-thirds requirement of Rule XXII is an unconstitutional inhibition on that right at the opening of a new Congress, if a majority of the Senators present and voting but fewer than two-thirds, vote in favor of the pending motion for cloture, the Chair will announce that a majority having agreed to limit debate on Senate Resolution 11, to amend Rule XXII, at the opening of a new Congress, debate will proceed under the cloture provisions of that rule.[60]

Two days later, the Senate voted 51 to 47 to invoke cloture. Although the vice president ruled that cloture had been invoked by the majority vote, his decision was appealed and reversed by the Senate on a roll-call vote of 45 to 53. The Senate subsequently failed to achieve the necessary two-thirds vote to invoke cloture.

At the opening of the Ninety-second Congress, Senators Church and Pearson introduced a resolution to reduce the number of senators required to curtail debate from two-thirds to three-fifths of those present and voting. They again hoped the chair would rule that a simple majority was sufficient to invoke cloture on a rules change at the beginning of a new Congress. Vice President Spiro Agnew, however, preferred to refer such questions to the full Senate for its decision. The proponents of the Church-Pearson resolution, therefore, had to comply with the two-thirds requirement they hoped to change.

Attempts to invoke cloture failed, and debate on the motion to consider the resolution dragged on for six weeks in spite of efforts by a number of senators to achieve a compromise. Louisiana Senator Allen Ellender, for example, suggested that a three-fifths vote be allowed to end debate on conference reports and appropriation bills. I was majority whip at the time and suggested that cloture be invoked by three-fifths of all senators. Subsequent efforts to close debate, on March 2 and March 9, failed to achieve the necessary two-thirds, by votes of 48 to 36 and 55 to 39, respectively. Appealing the decision of the presiding officer, Allen Ellender, that the cloture attempt had failed to receive the necessary two-thirds majority, Senator Jacob Javits of New York again contended that the Senate could alter its rules by a simple majority at the beginning of a new Congress. Majority Leader Mike Mansfield successfully moved to table Senator Javits' appeal.

At the beginning of the first session of the Ninety-fourth Congress, Senator Pearson joined with Minnesota Senator Walter Mondale in sponsoring an attempt to change the cloture rule to enable three-fifths of the senators present and voting to invoke cloture. Once more, the strategy would need a ruling by the chair that debate could be closed by a simple majority on a rules change at the opening of a Congress. Senator Pearson made a lengthy multiple-part motion that

the Senate proceed to consider the resolution, and that

> under article I, section 5, of the U.S. Constitution, I move that debate upon the pending motion to proceed to the consideration of Senate Resolution 4 be brought to a close by the Chair immediately putting this motion to end debate to the Senate for a yea-and-nay vote; and, upon the adoption thereof by a majority of those Senators present and voting, a quorum being present, the Chair shall immediately thereafter put to the Senate, without further debate, the question on the adoption of the pending motion to proceed to the consideration of Senate Resolution 4.[61]

Senator Mansfield raised a point of order against the motion, because it prescribed an end to debate by a majority vote. Vice President Nelson Rockefeller submitted the Mansfield point of order to the Senate for its decision. When the Senate voted 51 to 42 to table the point of order, it was, in effect, endorsing the doctrine that cloture may be invoked by a majority to change Senate rules at the start of a Congress.

Senator James Allen of Alabama then moved that the motion be divided, since it contained distinct and separate clauses. The effect of Allen's motion was to permit debate on the individual parts of the motion, which could not be debated when considered as a whole. Amendments and intervening motions followed, so that, as the Rules Committee's history pointed out, "Although the principle of majority cloture had been [temporarily] endorsed, the parliamentary tangle which followed division of the motion prevented a majority cloture vote from being taken on the original Pearson resolution."[62]

During the debate, Senator Russell Long of Louisiana offered to compromise on a constitutional three-fifths cloture rule. I, therefore, introduced a resolution on February 28, providing that debate in the Senate be closed by a vote of "three-fifths of the senators duly chosen and sworn," except in the case of a measure or motion to change the rules of the Senate, when a two-thirds vote of "senators present and voting" would be required to close debate. I requested immediate consideration of this resolution, but, in response to an objection, the resolution was held over.[63]

On March 3, 1975, the Senate voted to reconsider its February 20 action tabling Mansfield's point of order; rejected the motion to table the point of order; and, the next day, sustained the Mansfield point of order by a vote of 53 to 43. By this action, as the Rules Committee's published history stated, the Senate "erased the precedent of majority cloture established two weeks before, and reaffirmed the 'continuous' nature of the Senate rules."[64]

Also on March 3, I entered a cloture motion on the motion to consider the Mondale-Pearson resolution. Two days later, the Senate invoked cloture by a vote of 73 to 21—an affirmative vote by more than two-thirds of the senators present and voting—and voted 69 to 26 to consider the Mondale-Pearson resolution. The Senate then adopted the resolution that I had introduced on February 28 as an amendment in the nature of a substitute. I subsequently introduced a motion to close debate on the resolution as amended, and, on March 7, the Senate voted 73 to 21 for cloture. The same day, the Senate adopted my substitute providing that three-fifths of all senators chosen and sworn could invoke cloture. This provision applied to all measures except those amending the rules of the Senate, which still required a two-thirds vote of the senators present and voting.[65]

Four years later, on February 22, 1979, the Senate agreed to a resolution I introduced establishing a cap of one hundred hours of consideration once cloture had been invoked on a measure. When that time expired, the Senate would proceed to the final disposition of the measure or matter. Only amendments

then pending and only a motion to table, a motion to reconsider, and motions necessary to establish a quorum were then in order.[66]

Under the resolution, each senator would be entitled to one hour of time. Senators could yield their time to the majority or minority floor managers of the bill, or to the majority or minority leaders. Except by unanimous consent, none of the designated four senators could have more than two additional hours yielded to him or her. These senators, in turn, could yield their time to other senators. If all available time expired, a senator who had not yielded time, and who had not yet spoken on the matter on which cloture had been invoked, could be recognized for ten minutes for the sole purpose of debate.

The resolution, as adopted, provided that no senator could call up more than two amendments until every other senator had had the opportunity to call up two amendments. The resolution was amended by Senator Ted Stevens of Alaska to provide that, after cloture was invoked, the reading of amendments would be waived routinely if they were available in printed form to members "for not less than twenty-four hours."

The former cloture rule made in order amendments introduced prior to the completion of the cloture vote. The 1979 resolution made in order only those first degree amendments submitted by 1 p.m. of the day following submission of a cloture motion, with second degree amendments (amendments to amendments) in order only if submitted in writing one hour prior to the beginning of the cloture vote.

In January 1985, I introduced a resolution relative to television broadcasts of Senate debates. In my resolution, I suggested a number of rules changes, one of which was to substitute a twenty-hour post-cloture time limitation for the one-hundred-hour cap. In October, the Rules Committee ordered the resolution reported to the Senate with all provisions stricken that did not relate directly to the issue of television in the Senate. In February 1986, the resolution was laid before the Senate and debated for several days. On February 20, the Senate adopted a motion to recommit the resolution to the Rules Committee with instructions to report back forthwith the twenty-hour post-cloture cap and other provisions contained in my original resolution. One week later, on February 27, 1986, Majority Leader Bob Dole, Rules Committee Chairman Charles Mathias, other senators, and I offered a leadership amendment in the nature of a substitute. That same day, the Senate adopted this amendment; it then agreed to the resolution as amended, by a roll-call vote of 67 to 21.[67] The substitute amendment contained the current overall limitation of "thirty hours of consideration" after cloture has been invoked. The thirty hours may be increased by a nondebatable motion adopted by an affirmative vote of three-fifths of the senators duly chosen and sworn. The amendment also provided that, after cloture, the reading of the *Journal* could be waived by majority vote on a nondebatable motion.[68]

Mr. President, the current cloture rule is the product of decades of trial and experience aimed at curbing the extremes in the use of filibusters to block Senate action. It has discouraged—though not eliminated—post-cloture filibusters and has also provided a more effective tool in overcoming all but the most determined filibusters carried on by a sizable minority. Its effectiveness is aided greatly by the strengthening precedents that have been established over the past century, some of which antedate the first cloture rule in 1917.

Filibusters, 1917–1964

November 19, 1989

Mr. President, the adoption of the cloture rule in March 1917 did not spell the end for filibusters. From 1917 through 1963, the Senate invoked cloture on only five occasions. And in the thirty-four years between 1927 and 1962, despite fourteen efforts, no cloture motion succeeded.

In 1919, a fierce controversy over the Treaty of Versailles resulted in the adoption of cloture for the first time. After many weeks of debate, Senator Gilbert M. Hitchcock of Nebraska, the ranking Democrat on the Foreign Relations Committee and acting Democratic leader, offered a cloture motion on November 13. Signed by twenty-three senators, that motion provided that the "debate upon the pending conditions and reservations proposed by Senator Lodge . . . and all substitutes, amendments, and additions thereto proposed, be brought to a close." [1] Two days later, in the debate preceding the cloture vote, Hitchcock stated that he had "made a computation of the space occupied by each Senator in the [*Congressional*] *Record* during September and October in discussing the treaty," and "the supporters of the treaty during those two months" had consumed "27 per cent of the time" while the opponents had "consumed 73 per cent of the time." [2] The cloture motion was adopted by a vote of 78 to 16,[3] but the debate continued until November 19. On that day, the Senate rejected the resolution to ratify the peace treaty with Germany by a vote of 39 to 55. A motion to reconsider the vote carried,[4] but again the Senate rejected the resolution of ratification, by a vote of 41 to 51. Senator Oscar W. Underwood of Alabama, who sought President Wilson's support in his campaign to be elected Senate Democratic leader, then moved to adopt a resolution approving the ratification of the original treaty without conditions or reservations. Massachusetts Republican Senator Henry Cabot Lodge, the Foreign Relations Committee chairman—and archfoe of the treaty—made no point of order against the Underwood resolution on condition that a vote occur immediately. The Senate rejected the resolution, 38 to 53.[5] Thus, although a cloture motion requiring a two-thirds vote had been adopted by a majority of almost 5 to 1, the ultimate question at issue—the treaty—also requiring a two-thirds vote, had failed to garner even a simple majority, with or without reservations.

Three years later, on November 27, 1922, Senator Samuel M. Shortridge of California provoked southern senators into launching a vigorous filibuster when he moved to take up federal antilynching legislation which had passed the House.[6] The following morning, Senator Pat Harrison of Mississippi, a leader of the filibuster, objected to a request that the reading of the *Journal* be dispensed with, a request normally granted. The clerk then proceeded with the time-consuming task of reading the *Journal*. Harrison interrupted the reading to suggest the absence of a quorum, but the chair sustained a point of order that the reading could not be interrupted by a quorum call, and the chair was upheld by a 60-to-1 vote of the Senate. After the reading was concluded, Senator Harrison continued with further delaying tactics regarding the *Journal*. At one point, for example, he moved to insert in the *Journal* the names of localities in which certain North Dakota citizens lived who had, on the previous day, petitioned their senator, praying for

Senator Pat Harrison routinely filibustered against antilynching legislation. *Library of Congress*

the enactment of legislation to stabilize wheat prices. When this motion was rejected, Underwood then candidly announced to the Senate that "we are not disguising what is being done," and "you are not going to get an agreement to vote on this bill." He was "opposed to the passage of this so-called 'force' bill," which, should it ever become law, "would be the beginning of tearing down the last fabric left in the Constitution to support the integrity of the State governments."

Democratic Minority Leader Oscar Underwood, in sympathy with his fellow southerners, then laid down an ultimatum to the majority: "There are a large number of men whose names have been sent to the Senate, who have been appointed to important offices . . . and who ought to be confirmed; but they are not going to be confirmed; we are going to transact no more business until we have an understanding about this bill. . . . You know you can not pass it." [7] After considerable debate had occurred, the *Journal* was at last approved and the Senate adjourned.

The next day, the dilatory tactics were resumed. Senator Harrison moved to amend the *Journal* of the previous day's proceedings by inserting the prayer of the preceding day as it appeared, in full, in the *Congressional Record*. He asked, "What if a hundred years from now your great-great-great-grandchildren should look over the *Journal* of yesterday and discover that no mention is made of the fact that there was prayer yesterday in opening this body, and then they should take the proceedings of the following day . . . and should read that their great-great-great-grandfathers voted against my motion to amend the *Journal* so that the prayer might be incorporated in the *Journal*?" Harrison, with feigned piety, then answered his own question. "Why, those children of tomorrow would hang their heads in shame over the action of their ancestors." [8]

Needless to say, Senator Harrison's motion to amend the *Journal* was agreed to. Harrison then moved that the *Journal* be amended to state the exact hour on the previous day "when the President pro tempore of the Senate relinquished the chair" and "exactly at what time the Vice President resumed the chair." [9] A lengthy debate followed, the transaction of business remaining at a standstill, until the Senate adjourned over Thanksgiving Day without having approved the reading of the *Journal*. "When any considerable number of Senators are satisfied," declared North Carolina Senator Lee Overman, "and conscientiously believe that any proposed legislation is unconstitutional, that it involves the integrity of the States and the liberties of the people, and if passed would

undermine the very foundation stones of this Republic . . . they are fully justified in filibustering to prevent, if possible, a militant majority from roughshodding over a strong minority." [10]

It was obvious that the Democrats would not relent in their battle against the anti-lynching bill. For the discouraged Republican majority, there was no way to escape surrender. A determined and sizable minority blocked the transaction of any business, and the only reasonable expedient was to set the bill aside and go on to other things. Accordingly, on Monday, December 4, Senator Lodge moved to proceed to executive business, stating that the Republican conference had instructed him to say that "they would not press the bill further at the coming session or at the session which is just expiring." [11]

A week later, on December 11, another and longer filibuster began, this time over a ship subsidy bill pushed by President Warren Harding and Republican congressional leaders. The Senate Democratic minority strongly opposed the legislation, which had passed the House by a slim majority of only twenty-four votes. Leading the fight for the bill, Commerce Committee Chairman Wesley L. Jones of Washington pushed for early passage. Democratic Leader Oscar Underwood signaled the possibility of a filibuster. He pointed out that House Republican leaders had opposed the president's desire to pass the bill before the recent November elections, fearing the defeat of many Republicans because the measure was "unpopular with the American people." Even with the delay in House action, Underwood observed, "the result was an overwhelming defeat for the champions of the measure," nearly producing "a reversal of the political control of both Houses of Congress." Now, the Republican leadership sought to rush the bill through in the remaining weeks of the Sixty-seventh Congress, which would end on March 4, before the newly elected members could be sworn into office and register their opposition to ship subsidies. Such an action, contended Underwood, was "in virtual defiance of public sentiment" throughout the country.[12] Underwood's ally, Senator Duncan Fletcher, a Florida Democrat and ranking minority member of the Commerce Committee, then forced a reading of the bill and the accompanying committee report, which consumed more than twelve pages of the *Record*, following which the Senate adjourned until noon the next day, December 12.[13]

The Christmas holidays came and went, and other urgent legislation consumed most of the Senate's time until mid-February, when Senator Jones announced that the ship subsidy bill would be pressed and not be set aside to take up other matters. Stating that the Republican leadership had "been twitted on this floor because we have laid the bill aside from time to time," Jones explained that it had been necessary to pass appropriation bills in order "to avoid an extra session." He knew there was "a strong desire in Congress for a vacation" and that working "day after day from early morning till late at night," as members had been doing, it was "no wonder that they are worn out." Jones lamented that "no man will know how many years have been taken from his life, but," said he, "we are sure that many men have had their lives shortened by their work here." [14]

Still, the talkathon droned on, with lengthy speeches on myriad subjects. Texas Senator Morris Sheppard began a speech on the League of Nations on Monday, February 19, and resumed it the next day, speaking for nearly four hours the first day and more than six hours the next.

Reporting on the filibuster, the *New York Times* stated:

> At 9:20 o'clock tonight Senator Harrison made a point of no quorum and then followed a snarl that required an hour to straighten out. As soon as the clerk began calling the roll, the Democrats went into their cloakroom. . . . Their names were repeatedly called but not one emerged from the cloakroom.[15]

Determined to break the filibuster, Senator Jones then moved that the sergeant at arms be instructed to request the attendance of absent senators. According to the *Times*, Sergeant at Arms David S. Barry entered the Democratic cloakroom and "politely requested" Senators Thaddeus Caraway of Arkansas, Ellison Smith of South Carolina, Walter George of Georgia, Smith Brookhart of Washington and others in the room to appear in the chamber. "The reply," said the *Times*, "was a unanimous but smiling refusal." Administration supporters, who had promised to hold the Senate in session all night, gave up and recessed until the next day.

By late February, there was no longer any doubt that the obstructionists could and would keep the filibuster going until sine die adjournment at noon on March 4, throttling other legislation in the process. In the face of this threat, Senator Jones and the administration forces capitulated on February 28 by moving to take up a so-called filled milk bill, thus displacing the ship subsidy bill.[16] In the words of Alabama Senator J. Thomas Heflin, the "miserable measure" had "gone to its long, last sleep." It was "already dead."[17]

The next major filibuster broke out when the World Court Protocol was before the Senate in 1926. Opponents of the Court in the Senate included many of the so-called irreconcilables, who several years earlier had helped defeat U.S. membership in the League of Nations. Now they saw the Court as a back-door means of tying the United States to the League. They contended that the Court's power to render "advisory opinions" could undermine the nation's sovereign right to make its own laws. On January 15, Senator Coleman L. Blease of South Carolina launched into a speech, warming up with a folksy apology:

> Mr. President, I think if we ever have a contest in the United States to determine who is its poorest reader, that I can easily win the prize. So if any Senator has any other business to attend to I shall not consider it the slightest discourtesy if he declines to listen to my reading.[18]

Blease proceeded to read George Washington's farewell address, interspersed with Blease's own extemporaneous words of earthly wisdom. Invoking the Bible and the names of Calhoun, Webster, Hayne, Theodore Roosevelt, Wilson, Jefferson, and others, Blease entertained his colleagues by heaping scorn upon international bankers, foreign embassies, members of foreign legations, evolution, and Prohibition. Of Prohibition, Blease said that "any man who thinks this country has prohibition is an ignorant fool. . . . The only man in this country that has prohibition is the poor devil who has not the money to buy liquor, and everybody knows it."

Blease's contempt for foreign embassies was blistering as he spoke of "liquor sent over from Baltimore under protection for foreign embassies that they and their people might have a big Christmas, drink liquor, drink wine and champagne, frolic, and have dances." Senator Blease, like George Washington, was against "foreign intrigue," and that also included the "league court," whose "foreign judges are going to decide against us."[19]

Senator William E. Borah of Idaho, chairman of the Foreign Relations Committee and a determined isolationist, stated that, although he had "spoken upon the subject three times," he had not spoken at great length. He had "been here 18 years" but had

"never taken part in a filibuster" and was "not going to engage in any filibuster." He and others who were opposed to adherence to a world court only wanted "to present what we believe to be substantial arguments upon the proposition," after which "we will proceed to vote." When it came to fixing a date for a vote, however, he did not want to "cramp anybody." [20]

Other senators engaged freely in the loquacious sparring. On January 22, Senator Irvine Lenroot of Wisconsin, the most senior member of the Foreign Relations Committee to support the protocol, introduced a cloture motion signed by forty-eight senators. Meanwhile, Wisconsin Senator Robert M. La Follette, Jr., asked: "Why is so much pressure being exerted to force a vote on this resolution? What is the hurry? What interests of this country will be injured by considering this step fully?" La Follette reminded his colleagues that when the question of the League of Nations was before the Senate "the same kind of false alarm as to the impatience of the public over the debate was raised by the proponents of the league as is now being raised by the proponents of this court." On that occasion, said La Follette, "President Wilson demanded immediate action. He rebuked the Senate." La Follette further recalled, "It was stated then that the people were behind the President urging prompt, unquestioning approval of his demand that we join the League of Nations." The president went to the country, said La Follette, "confident that he would win an overwhelming victory," but the Wisconsin senator doubted if there had "ever been a more striking example of mistaken judgment or a more complete reversal of political fortune in the history of this Government." La Follette alluded to certain Republicans in the chamber who "personally have great distaste" for supporting the resolution approving America's entrance into the International Court of the League of Nations. Yet, those same Republicans, he said, were supporting the protocol "because the Harding and Coolidge administrations have sponsored it." [21]

On January 25, 1926, for only the second time since the cloture rule was adopted in 1917, the Senate, by a vote of 68 to 26, invoked cloture and, two days later, agreed to the resolution by a vote of 76 to 17.[22] It took this action, however, only after Senate supporters had accepted five reservations, including restrictions on the Court's power to render advisory opinions. (These reservations ultimately blocked U.S. adherence to the Court.) Had not the administration and the Senate Republican majority been so willing to accommodate the opposition, this cloture effort would most certainly have failed. Cloture would not be easily applied in the future to curb filibusters.

Several months later, in the spring of 1926, a filibuster was conducted against legislation for migratory bird refuges, but the bill died after an effort to invoke cloture failed. Legislation for development of the Lower Colorado River Basin suffered a similar fate when, on February 26, 1927, cloture was rejected by a vote of 32 to 59. Two days later, however, the Senate did invoke cloture on a Prohibition reorganization bill, although a final vote on the bill was delayed for almost two days by the opponents of a resolution extending the life of a committee that was investigating charges of corrupt senatorial elections in Illinois and Pennsylvania. As Franklin Burdette, author of the study of filibusters, observed, "filibusterers against one measure had been able to make cloture against another serve their purposes for nearly two days!" [23] At one point, Senator J. Thomas Heflin of Alabama—who, incidentally, was an uncle of our own colleague and friend from Alabama, Senator Howell Heflin—ridiculed "obstreperous Republican filibusterers" for obstructing action on the resolution for campaign in-

vestigations. "You are saying in your hearts," he declared with fine sarcasm:

> Committee, spare that campaign boodle tree,
> Touch not a single bow;
> In election times it shelters me,
> You must not harm it now.[24]

The filibusterers succeeded in killing the campaign resolution, along with a host of other measures which accompanied it to the parliamentary guillotine, when adjournment came on March 4.

As in the years before 1917, filibusters were most successful just prior to the mandated March 4 adjournment of a Congress. During a filibuster in March 1929 against a bill extending the life of the Federal Radio Commission, for example, Senators Coleman L. Blease of South Carolina and Royal S. Copeland of New York spoke at length in opposition to the measure. Blease said that he did not "know much about the radio business" and that he had "been opposed to the bill and the commission ever since it started." Then he informed his colleagues that he had "noticed recently that there is a report that it is intended to put a radio in the Capitol; in fact, in this very room." That Blease's feeling toward radios was indeed less than lukewarm, could be inferred from the following inquiry he made of Copeland, "I want to ask the Senator, who is an expert on radio, if that radio is put back in the corner of the Chamber here close to my seat whether it would be possible for one of these anarchists to send something through it and blow us all out of here?" Copeland's response was that it "would be a calamity too dire to contemplate." [25]

Were not the very lives of senators being put at risk by this contraption, the radio? asked Blease. "They might fill that thing up with gas, some deadly gas," he warned, "and just about the time the crowd assembled in this Chamber [for the inauguration of President Herbert Hoover], everybody in control of the Government of the United States, some fellow might turn on a machine down here and just gas out the whole business."

Blease's expressed fears may have been less than totally innocent, but his dislike for the Federal Radio Commission, for radios, and for the bill was not to be doubted.[26] Blease and Copeland succeeded in having the bill modified to shorten the time extension, and the filibuster ended.

In 1932, Huey Long burst upon the Senate stage. The junior senator from Louisiana was atomic energy in the flesh! Unflappable, irrepressible, indefatigable—here was the granddaddy of all filibusterers, those who had gone before and those who were yet to come. For wit, brass, and pure showmanship, Huey Long was in a class by himself. According to Franklin Burdette, not since the days of the eccentric John Randolph, over a century past, "had the Senate been treated to such a jargon of words." [27] The "Kingfish" had arrived! And, in January 1933, when the branch banking bill was before the Senate, he gave his colleagues a foretaste of things to come.

The bill, introduced by Senator Carter Glass of Virginia, dealt with Federal Reserve banks and national banking associations and the regulation of interbank control. Long vigorously opposed provisions permitting branch banks. On January 10, he spoke at length against the bill, and, typically, subjected its provisions to the fire and brimstone of passages from the Bible, quoting from the book of Isaiah,

> Woe unto them that join house to house, that lay field to field, till there be no place, that they may be placed alone in the midst of the earth!

Having thus proved that the Lord was clearly on his side, Long made his point, declaiming, "All that it is necessary to put in

A natural showman, Senator Huey Long was noted for his lively, inventive filibusters. *U.S. Senate Historical Office*

there are the words 'banking house to banking house and woe be unto them.' " Laughter in the galleries drew an admonition from the vice president in the chair.[28]

Flaying the "5 per cent" of the rich people of the country who owned "85 per cent of the wealth" and controlled "the other 15 per cent," [29] Long invoked the book of James:

> Go to now, ye rich men, weep and howl for your miseries that shall come upon you.
>
> Your riches are corrupted, and your garments are motheaten.
>
> Your gold and silver is cankered; and the rust of them shall be a witness against you, and shall eat your flesh as it were fire.[30]

Long left no doubt that he was for decentralization of the banking authority "to take it out of the hands of the imperialistic financial manipulators, and to put the control back among the people of this country." And, again, what better authority than the Book of James!

> Behold, the hire of the labourers who have reaped down your fields, which is of you kept back by fraud, crieth: and the cries of them which have reaped are entered into the ears of the Lord of Sabaoth. [31]

Having warned the Senate of the dangers of concentrating wealth in the hands of a few, Long announced that the wealth must be distributed: "The only way we are going to be able to get the people to spend more money is to give them something to spend." But instead of remedying the situation, he said, the government was "imposing a condition that means twofold more trouble on top of what we have already." The branch banking bill would "close the door so that there will be eternal trouble with a situation that admits of no correction." [32]

The next day, Senator Long renewed his oratorical forays against the bill. At one point, he sought to have the clerk read a resolution adopted by the Country Bankers' Association, but Senator Glass objected to the request, saying, "We so much prefer to hear the mellifluous voice of the Senator from Louisiana that I am not willing to have the harsh voice of the clerk disturb us." The president pro tempore then put the question before the Senate, which rejected the request that the clerk read the resolution. Unperturbed, Long gleefully responded to the gentle reproof:

> Mr. President, I thank Senators for this great expression of fealty which they have toward having my vocal strains resound through this Chamber. . . .
>
> I do not know of anyone who has been told in the Senate, even against his own will, that the Senate desired to hear him, as I have been here this evening. It is a compliment which I truly appreciate. I shall carry with me, in what few days or few years I have in this body, appreciation for the Senator from Virginia; but I will read the resolution myself.[33]

Later in the day, when Long had yielded the floor, Glass declared that the Senate was "confronted with the question as to whether or not it shall be permitted to legislate." He served notice that, beginning the next day, he would "ask the Senate to sit until a reasonable hour in the evening in order that we may commence a deliberate consideration of the pending bill." [34]

Finally, after a unanimous consent agreement paved the way for passage of the Glass banking bill on January 25, 1933, the filibuster ended.

Huey Long participated in several filibusters over the next two years. On May 21, 1935, he undertook to prevent passage of a resolution providing for a joint session of Congress to hear President Roosevelt deliver a veto message. In the midst of a long, rambling discourse, Long referred to the effect that the wage scale set by the president for "works-relief" projects would have in Tennessee and other southern states. Senator

Exhausted senators doze, while one of their colleagues drones on and on. *Library of Congress*

Kenneth McKellar of Tennessee took umbrage at the mention of his state's name and admonished Long to "confine himself to Louisiana" and "let Tennessee alone." Continuing, McKellar angrily charged Long with never having "had a bill passed for Louisiana or for the country since he has been here." Moreover, the fiery Tennessean doubted that Long "could even get the Lord's Prayer endorsed in this body if he undertook to do so." Long liked to call himself the Kingfish, charged McKellar, and, while "he can be the 'Kingfish' in Louisiana . . . he is not the 'kingfish' in Tennessee, and he is not the 'kingfish' in this body; and his record proves that fact." McKellar's withering blast continued: "The Senator from Louisiana has an idea that he is a candidate for President. For Heaven's sake!"

The galleries convulsed with laughter, which drew a stern admonition from the chair. Senator Alben W. Barkley of Kentucky appealed to the chair not to be too harsh with the occupants of the galleries, observing that "when people go to the circus they ought to be allowed to laugh at the monkey."

Long, ever ready to turn the tables on an adversary, quipped, "Now, Mr. President, I resent that statement about my friend from Tennessee." [35]

After he had talked for about five hours, Senator Long suggested the absence of a quorum and left the floor, whereupon Senator Thomas Connally of Texas gained recognition and claimed the floor. Long had made a technical error by walking off and thus had lost the floor.[36] The Senate then adopted the resolution authorizing the joint session.

Senator Huey Long had already proved himself to be one of the most resourceful filibusterers that the Senate had ever known. He was a superb debater—tough, gutsy, and brilliant—and his quick wit, folksy humor, and flamboyant style made him a crowd pleaser, whether on the campaign stump or on the Senate floor. In the clinches, he asked and gave no quarter. When Huey Long debated an issue, he was always center stage. He is perhaps most celebrated for his 1935 filibuster concerning the proposed extension of the National Industrial Recovery Act.

The Supreme Court had ruled the act unconstitutional, and the resolution before the Senate proposed to extend certain provisions of the original act until April 1, 1936. Having previously passed the Senate, it had been amended by the House and was back before the Senate on Tuesday, June 11, for further amendment. Senator Thomas Gore of Oklahoma had succeeded in having an amendment adopted to require Senate confirmation for any government officials appointed by the president whose salaries exceeded $4,000

per annum. Long, who supported the Gore amendment, had moved to reconsider the vote, a normal procedure, and Gore had moved to table Long's motion so as to conclude all action on the amendment and prevent any subsequent effort to overturn the vote. Alben Barkley, however, prevented a vote on Gore's tabling motion by recessing the Senate until the next day, Wednesday, June 12.

When the Senate resumed consideration of the matter on the twelfth, the tabling motion was rejected. Debate then began on the motion to reconsider the vote on the Gore amendment. Since it was apparent that the opponents had garnered enough votes to reverse the earlier decision and defeat the amendment, Long took the floor in an effort to block reconsideration of the earlier vote approving the Gore amendment.

Referring to the Roosevelt administration, Long charged that "they are promising every man in Louisiana who will say he is against Huey P. Long a job at $300 or $400 or $500 a head." Stating that one of the "Jim Farley-Roosevelt leaders down there" was operating "a tombstone and coffin club business," and that "this thumb-rigging, screw-driving character" would promise that "if a man paid 10 cents or 25 cents or whatever it was ever so often, that when he died they would give him a decent burial. They promised him a brass band at his funeral and a coffin and a tombstone and a shroud." But, said Long, "the little bird who was running this skin game" would go out on the night after a funeral "and dig up the coffin, take out the body, take the shroud off the body, put the body in a pine box, replace it in the ground, and then pack the ground down tight over it, and put the shroud and coffin on sale again and bury another man in them the next day." Long declared, "They do not dare bring that kind of character before the United States Senate for confirmation." [37]

Long continued his harangue against the administration's appointees in his state. Singling out another target, he spoke of a "little pot-bellied character down there" who reminded him very much "of a chicken snake." No one within the sound of his voice could have avoided amusement as the hilarious Huey Long recalled that

> back in the old days in the woods, how we would hear the hens squalling and the chickens raising Cain out in the backyard at night, and we would run out and take a lamp and a shotgun to see what was the matter; and, lo and behold! We would raise up the hen and there would be a chicken snake that had swallowed every egg there was in the nest, and . . . he would be so puffed out in the stomach that you could hardly see how he could crawl away from there. This chicken snake would be about 1 inch around at one end and about 1 inch around at the other end, and about 8 inches around in the middle.

Long said that the chicken snake would then "crawl through a rail fence and break the eggs, so as to get the benefit of the nutrition that is in the eggs." This "little pot-bellied politician," Long averred, had been given the right to employ several thousand people, had jurisdiction over handling several million dollars of public funds, was "getting $500 or $600 a month" and had "grown so fat and so bloated, and his stomach has become so puffed, that they will have to get a rolling Chair, if things keep on as they are, to assist him in getting about."

Of course, Long's audience could not keep from laughing. His point had been made: "They do not dare bring these characters here and allow them to be fumigated" by the United States Senate. [38]

As to "that detestable, contemptible, despicable blue-buzzard N.R.A.," Long praised the nine men on the Supreme Court who had ruled the law to be unconstitutional and, in doing so, had "saved this country from Fascism and Bolshevism." He shouted, "God save and God bless those men to render serv-

ice again! For every mistake they have ever made they are entitled to a million mercies." [39]

Long went on for hours, reading the Constitution, and commenting at length on section after section and clause after clause. Suffering interruptions from other senators from time to time, he would engage them in banter, sometimes derisive, sometimes cutting, often sarcastic, and always impervious to criticism or badgering from his would-be detractors.

Long continued to cover the oratorical waterfront, eventually getting around to a discussion of some of his down-home recipes. Oysters being a favorite, he regaled the galleries with a long-winded explanation of "the way to cook oysters." Then he thoughtfully advised his colleagues that "if every Member of the Senate will clip out of the Record tomorrow what I have said today and not give it to his wife"—and here he was especially considerate of senators' spouses—"learn how to do it himself and then teach his wife—he will know how to fry oysters better than most families in Washington." It was Long's opinion that there was "no telling how many lives have been lost by not knowing how to fry oysters," there having been "many times" he had heard of "some man who was supposed to have had an acute attack of indigestion or cerebral hemorrhage or heart failure, and the chances are the only thing that was the matter with him was that he had swallowed some improperly cooked oysters." [40]

Long then revealed his "recipe for potlikker." It was made from turnip or mustard greens, but turnip greens were preferable because they contained "more manganese." Of course, there was one problem: "Sand is always in them." His instructions were, therefore, that, "to get every vestige of dirt and sand and grit out of the greens you have to wash them many, many times." Then, after he had described the quantity of water and the amount of "salted side meat" needed, he said the greens should be cooked "until they are tender." As to the potlikker? It was the "residue that remains from the commingling, heating, and evaporation." Interrupted by laughter, Long expostulated, "anyway, it is in the bottom of the pot!" [41]

After such a rhetorical smorgasbord of subjects had been disposed of to the obvious delight of his listeners—especially those in the galleries—the senator from Louisiana shifted his attention to the Schechter poultry case, in which the NRA had been declared invalid by the court. His comments on the "chicken coop case" were a classic in the use of trenchant wit as he systematically and methodically portrayed the NRA as a colossal act of folly.

According to Long, "When this coop of chickens got to New York," a man looked into the coop and decided that he liked "that pullet right over there, that frying-size pullet," but the man in charge said, "Hold on there . . . before you pull out that pullet hold on a minute; let us get down the N.R.A. rule book and look through it and see what the rule is before you take a chicken out of the coop." So, declared Long, "they got down the rule book . . . and it said there that no man could reach into a coop of chickens and pick out any particular chicken; that he had to blindfold himself and reach in and take whichever chicken came to hand. That is in the code." When the laughter subsided, Long reminded his colleagues, "that is a part of this wonderful thing that we are sitting here to reenact . . . as soon as I get through talking." But, disregarding the NRA and its rule book, Long proclaimed, the man proceeded to get the chicken he wanted, so "they indicted the poor devil and ordered him sent to the penitentiary because he got out of the coop the kind of chicken he wanted." The fellow "gets a lawyer, pays

Equipped with plenty of reading material, a senator embarks on a filibuster. *Carl Rose*

him his cash, and gets convicted," all because he had violated a provision in "rule book, volume 6, page 641, paragraph z, subdivision 2" which provided, said Long, that a buyer had to take chickens as they come, "he cannot discriminate between chickens." Laughter rang throughout the chamber, and the chair once again reminded the galleries to observe the rules of the Senate. Long agreed that the rules did not allow demonstrations of approval or disapproval, but he added that, if those in the galleries approved of what he said, "it would be all right for them to write me a nice letter," and, just in case he should run for office, "you can enclose a little contribution for the next election." "Things like that," said Long, "are always in the rules of the Senate," even though demonstrations in the galleries were not allowed.[42]

Of such stuff was Senator Long's filibuster made. According to the *New York Times* of June 14, 1935, when the tired but scrappy Louisianian finally yielded the floor "at about 4 a.m." on Thursday, June 13, he had spoken for fifteen and a half hours at a cost of "about $5,000." The speech consumed eighty-four pages of the *Congressional Record*,[43] including numerous interruptions—some from senators hostile to Long, while others came from senators eager to join in the prevailing carnival atmosphere.

That the feisty filibustering buccaneer was an extraordinary showman was evident; his story-telling, recipe-giving speech had elicited laughter ninety-eight times, and numerous admonitions had been directed to the gallery occupants by the chair. But Long lost the battle. The amendment requiring Senate confirmation of administration appointees was tabled by Senator Barkley soon after Long's speech ended.[44]

The June 1935 speech is perhaps the most-quoted filibuster example in U.S. Senate history, but it is also one of the most ridiculed by critics of parliamentary obstructionism. Within the Senate itself, administration forces, together with a coalition of new senators, were strong in their denunciations, while press comments regarding Long's tactics were generally unfavorable. A *New York Times* column by Arthur Krock, headlined "Long's Defeat in Filibuster Checks His Senate 'Mastery,'" stated that, according to

"some observers," the senator from Louisiana "had let himself in for something foolish, something destructive to the reputation he has given himself . . . as the real master of the Senate." In Krock's view, "such spectacles as Mr. Long has often been permitted to make of the Senate and himself" were coming to an end. "He may try the same thing soon again. But he will be punch drunk when he enters the ring." [45]

Long did try again two months later, on the night of August 26, 1935, when the leadership was racing to pass a deficiency appropriation bill containing funds for the newly enacted social security program before a midnight end-of-session deadline. The Senate had previously added to the House bill provisions benefiting wheat and cotton farmers, which the House had refused to accept. When the bill came back to the Senate, Majority Leader Joe Robinson of Arkansas attempted to remove the amendments. Long objected and took the floor, hoping to force the leadership of both houses to find ways to accept the amendments rather than have the bill die with the impending sine die adjournment. The amendments, giving farmers minimum prices of 90 cents a bushel for wheat and 12 cents a pound for cotton, were supported by a coalition of western and southern senators. Complaining that "the chairman of a [House] committee has taken the deficiency bill and has served notice" that the committee would "not report the bill with the [cotton and wheat] amendment," [46] Long shouted: "I challenge all sides and beg all sides, the high, the mighty, the powerful, to let the House have a chance to vote. . . . Take this bill and send it back to the House. . . . and let the House vote on this matter tonight. . . . Let them vote. Who is afraid?" Otherwise, Long made it clear, the deficiency bill would die at midnight. "If you are in such a big hurry that you have to have it by 12 o'clock or not have it at all," he declared, "then you let the House of Representatives vote on the bill." [47]

At one point, Long was forced to take his seat on a question of order raised by Washington Senator Lewis Schwellenbach, whose dislike for Long's tactics was well known. Schwellenbach complained that Long had transgressed Senate rules by referring to a member (Representative James P. Buchanan of Texas, chairman of the House Appropriations Committee) by name. On a motion by Senator Sherman Minton of Indiana, the Senate voted to permit the Louisiana senator to "proceed in order." [48] Unperturbed, Long resumed his efforts and, as time went on, his increasingly irritated colleagues repeatedly interrupted his speech with questions and parliamentary inquiries so phrased as to deliver stinging rebukes to the senator. Schwellenbach and Alabama Senator Hugo Black were especially caustic, taunting Long with derisive and scornful reproaches. Schwellenbach, in the guise of a parliamentary inquiry, asked the chair

> whether the older men and women of this country . . . are to be deprived of an opportunity for a pension, whether the little children . . . are to be deprived of opportunity, whether the blind are to be deprived of the opportunity which this bill provides for them, simply because the Senator from Louisiana wishes to provide publicity for himself, and get himself in the newspapers, and talk to the occupants of the galleries.

The president pro tempore responded that "the Chair cannot answer that question at the present time." But Long answered by reminding his tormentors that it was he who had saved the bill and "kept it alive" on the preceding Saturday:

> Ah! There was not a tear then. . . . Oh, the tears! How the salty tide runs around me. I can feel it in every pore, how there is weeping, how there is everything expressing deep sympathy, to induce me to pause long enough to allow the motion of the Senator from Ar-

kansas to prevail, to take the wheat farmer and the cotton farmer out of the bill.[49]

Again and again, Long yielded to Black for a question, only to be upbraided. In one such instance, Senator Black said:

> The Senator is fine on receiving laughter from the galleries, but I ask the Senator if he thinks he will receive laughter from the old people who are deprived of their pensions by his filibuster; from the crippled children who are deprived of their medicine by his filibuster; from the mothers who are sick . . . and who are deprived of their medical treatment on account of his filibuster; from the blind who are deprived of the money needed to take care of them by his filibuster; from the railroad men who desire to see their pension fund start in operation and who are deprived of having it done by his filibuster. Does he think they will smile and laugh at his witticisms and his smart sayings? [50]

Long repeatedly responded to such censure by insisting that he was for the bill but that the House should be forced to vote on the amendment to aid the cotton and wheat farmers of America. If the Senate leadership would send the bill back to the House for a vote, he would give up the floor. In Long's view, there was a simple solution for saving the bill: "There is one man in this body who can get it over there. If the Senator from Arkansas [Majority Leader Joseph Robinson] asks me to yield for the purpose of withdrawing his motion, so that the bill may go back to the House, I will yield." [51]

As the hours went by, even other senators who supported the amendment on wheat and cotton pleaded with Long to relent and let the bill pass. But he remained defiant to the last, impervious to entreaties and threats alike. At midnight, the gavel came down, the session ended, and the bill died.

Fifteen days later, Senator Huey Pierce Long was dead, shot by an assassin at the state capitol in Baton Rouge, Louisiana.[52] The Kingfish, who, even today, remains unrivaled in the annals of Senate filibusters, was gone forever.

A short, but successful, one-man filibuster was conducted on the night of Saturday, June 20, 1936, when Senator Rush D. Holt of West Virginia took the Senate floor to oppose legislation to regulate commerce in bituminous coal. Holt, with whom I served in the West Virginia legislature in later years, threatened to read from a volume of *Aesop's Fables* until final adjournment of the Congress, due to occur at the end of that day. The bill Holt was attacking was sponsored by his senior colleague from West Virginia, Senator Matthew Mansfield Neely, but the two senators had been feuding. Holt had been elected to the Senate on November 6, 1934, for the term beginning January 3, 1935, but not having yet reached the age of thirty, did not take his seat until June 21, 1935. Neely, a veteran of political wars in West Virginia, was a close ally of John L. Lewis, president of the United Mine Workers of America, with over 125,000 members in the state. Both senators were very articulate, outspoken, and tough infighters when it came to politics and debate.

When Senator Sherman Minton of Indiana asked Holt during the filibuster whether he expected to support Neely in the upcoming November election, Holt replied, "Mr. President, if I should say what I thought of him I would be violating the rules of the Senate, because I am not allowed to talk about my colleagues in that way." [53] It was clear that there was no love lost between the two West Virginia Democratic senators.

Holt spoke at some length against the pending coal legislation and then turned his attention to *Aesop's Fables*. Senators were to draw their own inferences from the fables, some of which, of course, were meant to apply to UMWA chief Lewis and Senator Neely. Holt droned on, from fable to fable: "The Elephant and the Assembly of Animals"; "The Dog, the Cock, and the Fox"; "The Wolf and the Lamb"; "The Ass That

In 1953, Wayne Morse held the floor for more than twenty-two hours. *U.S. Senate Historical Office*

Carried the Image"; and others, until Majority Leader Joe Robinson asked, "Is it the Senator's intention to continue his address?"

"I have a great many of Aesop's Fables to read," replied Holt.

"The Senator would not be willing to yield for a vote on the bill?"

"Oh, I would have to read all these fables," Holt maintained stoutly. "I desire to read them." [54]

Holt clearly intended to run the clock until the session's end. Soon afterward, the Senate adjourned sine die.

Filibusters continued to occur through the late 1930's, and in the 1940's and 1950's, with efforts to invoke cloture largely unsuccessful. In 1953, Wayne Morse of Oregon set a new record for long-windedness in the Senate when he took the floor at 11:40 a.m. on Friday, April 24, and spoke until 10:06 a.m. Saturday, a total of twenty-two hours and twenty-six minutes.

Morse opposed the pending offshore oil bill, and, according to the *New York Times* of April 26, 1953, "only once did he get a respite of as long as two minutes. . . . when he stopped for a colleague to make a brief statement in introducing a bill."

When he took the floor, Morse had already spoken twice on the bill but was given

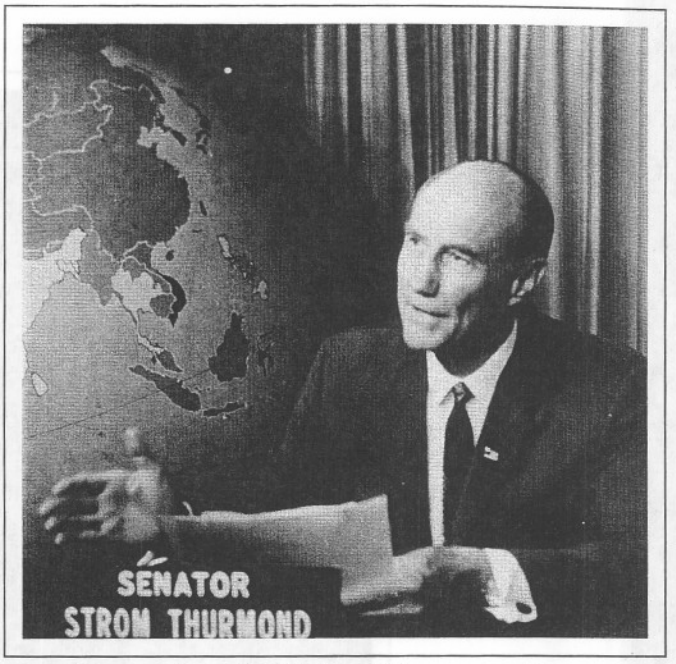
consent to speak again, in spite of the two-speech rule, after a warning by Majority Leader Robert A. Taft of Ohio that this would be Morse's "last speech." When asked by Taft how long he would speak, Morse replied, "I had a rather bad meal last night, which is going to handicap me somewhat, but I think I am good for from 8 to 12 hours." [55]

Morse talked about the educational needs of the country, the national debt, population growth, the REA, and, briefly, about his fondness for ring bologna and breeding horses. He spoke extensively about "the filibuster technique," or "prolonged debate," and the purposes to be served. "There is nothing improper about it, so long as it is done with good taste, with dignity, and with sincerity." [56]

When Morse yielded to Senator George Malone of Nevada for two minutes, by unanimous consent, for the purpose of introducing a bill, Majority Leader Taft asserted that Morse "will have to stand if he is to retain the floor." Morse replied that he "was merely sitting down in order to obtain a little rest" but that he would be glad to comply.[57]

Early on Saturday morning, Morse was called to order by Senator William A. Purtell of Connecticut, because of "the requirement that both feet be on the floor." [58] Morse had "placed a foot on a chair beside his desk and started to lean an arm on his leg." [59] Morse promised to proceed in order.

Senator Morse's record was exceeded four years later by Senator Strom Thurmond of South Carolina, who spoke in opposition to the Civil Rights Act of 1957. Thurmond began speaking at 8:54 p.m. on August 28 and completed his speech at 9:12 p.m. the next day—according to *Congressional Quarterly*, a total of "24 hours and 18 minutes." [60] Thurmond stated, at the close of his speech, that he had spoken "24 hours and 22 minutes," [61] but, in either event, he established



Strom Thurmond set the all-time filibuster record in 1957 when he spoke for more than twenty-four hours. *U.S. Senate Historical Office*

a record that remains unbroken today, thirty-two years later.

Thurmond spoke throughout the night of Wednesday, August 28, and all day Thursday against "the so-called voting-right bill." He discussed each of the forty-eight states' laws for the protection of voters. He then discussed the jury trial provisions in connection with criminal contempts of court arising out of civil rights cases, and expressed his opposition to the creation of a Commission on Civil Rights. Thurmond read at length from a treatise tracing the historical development of the jury system. His speech was interrupted many times for colloquies with friendly senators, like William Langer of North Dakota, and Thurmond yielded for the transaction of business for brief periods, as when the newly elected senator from Wisconsin, William Proxmire, took the oath of office on August 29. Thurmond confined his entire remarks to the bill and related subject matter. Shortly after his speech was com-

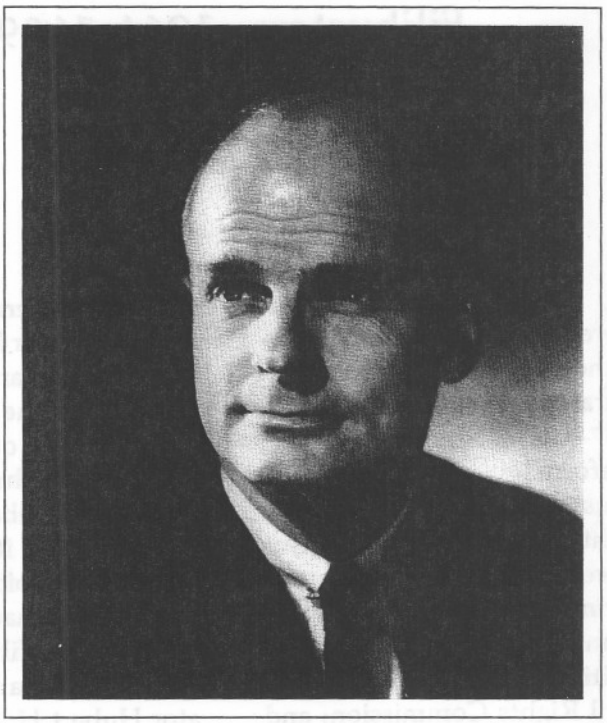
pleted, the Senate approved the bill by voting 60 to 15 to concur in the House amendments.[62]

Another of the longest speeches in Senate history occurred in 1981 when Senator Proxmire spoke sixteen hours and twelve minutes in opposition to legislation increasing the debt limit to over a trillion dollars. Beginning his speech at 6:15 p.m. on September 28, Proxmire spoke virtually nonstop until 10:27 a.m. on September 29.[63] He was not attempting to filibuster the bill, he said, assuring other senators that he would stop speaking "by 10:30 tomorrow morning [September 29]." He was making a "record" on what he felt was "a great watershed in our economic life when we go over $1 trillion national debt."[64] Proxmire only yielded twice to other senators while he held the floor—once to me for a brief statement lasting about four minutes, and once for a brief colloquy with Senator James J. Exon of Nebraska.

Proxmire was concerned about increasing the debt limit above a trillion dollars. What would be next, he wondered: "Are we going to go to a quadrillion? Mr. President, you know a quadrillion is a thousand trillion." After that came a quintillion, then "we go to a sextillion, then a septillion." At some point, supposedly, the "googol" would be reached. Proxmire explained, "a googol is 1 with 100 zeros after it"—a term "that is used with respect to measuring distances in outer space."[65]

Proxmire, who always kept himself physically fit through careful dieting and exercise, finished his speech in great shape.

Of the many talkathons that have occurred during the seventy-two years following the 1917 cloture rule, antilynching legislation, creation of a Fair Employment Practices Commission, ending the poll tax, and other civil rights bills were the subjects of many filibusters. Following the passage of the Civil Rights Act in 1964 and the Voting Rights Act in 1965, however, the use of filibusters has shifted. Except for school-busing and equal job opportunity legislation, most cloture votes in recent years have occurred on legislation covering a broad range of issues, such as amending Rule XXII, permitting common-site picketing, establishing a consumer agency, and Export-Import banking. As we shall see, Senate filibusters have occurred far more often since 1964, as have the successful efforts to break them.



In a 1981 speech against raising the ceiling on the national debt, Senator William Proxmire talked throughout the night for more than sixteen hours.
U.S. Senate Historical Office

Filibusters, 1964–1989*

Mr. President, of the many filibusters during the past twenty-five years, I shall discuss only three: the 1964 civil rights filibuster, the 1977 natural gas deregulation filibuster, and the 1987–1988 filibuster on campaign financing reform.

The 1964 filibuster occurred on a House bill, the Civil Rights Act of 1963, which was designed to enforce the right to vote; to protect against discrimination in federally assisted programs and in public accommodations, public facilities, and public education; to extend the Civil Rights Commission; and to establish a Commission on Equal Employment Opportunity. It was, indeed, a major and far-reaching civil rights bill, which had President Lyndon Johnson's strong backing.

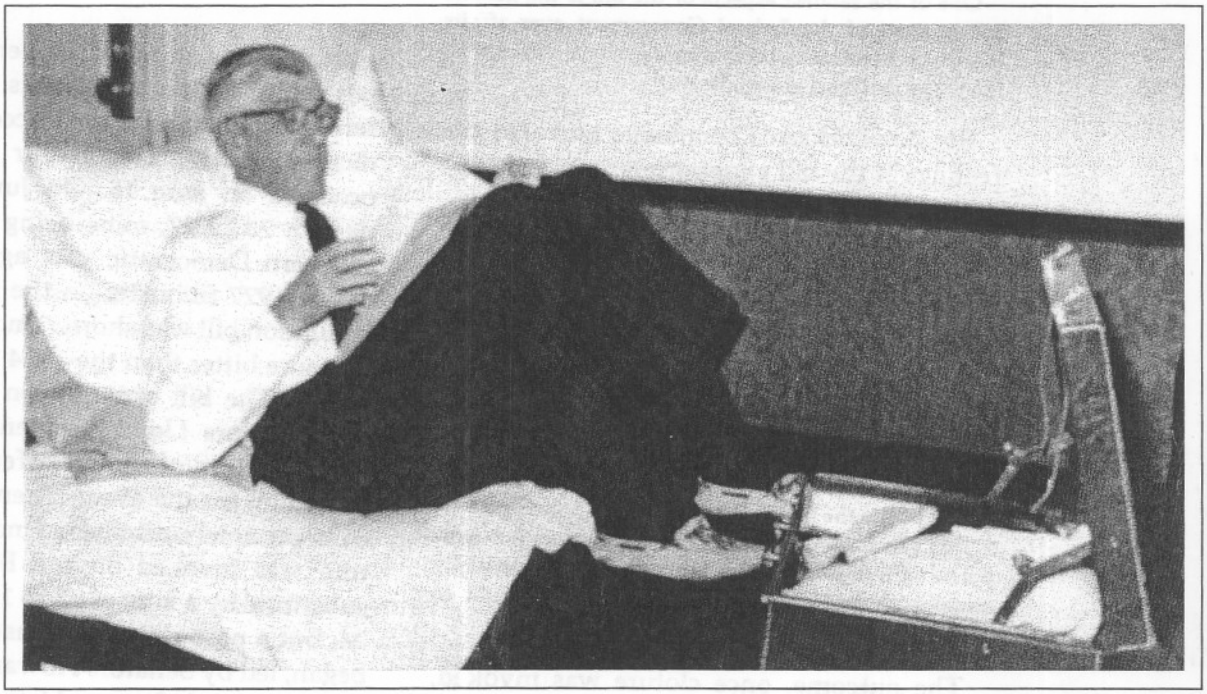
When the bill arrived from the House on February 26, 1964, it went directly to the Senate calendar, thus avoiding referral to the Senate Judiciary Committee, chaired by Senator James O. Eastland of Mississippi, an avowed opponent of civil rights legislation. Majority Leader Mike Mansfield moved on March 9 to take up the bill, and the motion was debated until March 26, when the Senate voted, 67 to 17, for the motion (my own vote being with those in the majority). From March 26 until cloture was invoked on June 10, the bill was before the Senate for a total of 77 days—including Saturdays, Sundays, and holidays—and was actually debated for 57 days, 6 of which were Saturdays. Still, the bill was not passed until 9 days after cloture was voted. Hence, 103 days had passed between March 9, when the motion was made to take up the bill, and final passage on June 19.

The southern senators opposing the bill, led by Senator Richard B. Russell of Georgia, were well organized, and their speeches were germane to the bill. The 1964 filibuster thus differed from other lengthy filibusters of the past, in that there was serious and informed "extended debate" over the entire period during which it was before the Senate. The discussion avoided the time-consuming dilatory tactics that had been the trademark of many earlier filibusters, and neither side resorted to parliamentary gamesmanship. Senator Hubert H. Humphrey of Minnesota led the forces supporting the bill, and he proved equal to the task. Majority Leader Mansfield played a low-key role, quietly courting Minority Leader Everett Dirksen's support, and avoiding all-night sessions, except for my all-night speech against the bill on June 9, 1964—the longest speech (fourteen hours and thirteen minutes) of the debate.[1]

Well-orchestrated, heavy and unrelenting pressure from the administration, civil rights groups, churches, labor organizations, and the media proved, in the final analysis, to be too much for the embattled southerners. In addition, Dirksen, who was the crucial factor in the outcome, threw his prestigious influence into the balance in support of cloture. When the vote came on June 10—the one-hundredth anniversary of Abraham Lincoln's nomination for a second presidential term—it was decisive: 71 to 29 for cloture. Except for Senators Carl Hayden of Arizona and Alan Bible of Nevada, I was the only nonsouthern Democrat who voted against cloture.[2]

Senator Russell reflected the views of the bill's opponents:

* Prepared December 1989



Senators made themselves comfortable during a filibuster in 1960; *above*, Pennsylvania Senator Hugh Scott and, *below*, Massachusetts Senator Leverett Saltonstall. *U.S. Senate Historical Office*

Mr. President, what does equality mean?

. . . Equality does not mean that one person shall be admitted to a club merely because he desires to be. . . .

No, Mr. President, equal rights in this land of ours means that each citizen has an equal opportunity to acquire property through honest means, that once that property has been acquired he has a right to exercise dominion over it. . . .

Life, liberty, and property—in that order—are spelled out in the Constitution of the United States as our greatest civil rights. I care not how much politics may be involved, and it matters not how great may be the emotional appeal. We cannot strike down one of those rights without gnawing into the very vitals of constitutional government in this land. . . .

Mr. President, those of us who have opposed this bill have done so from a profound conviction that the bill not only is contrary to the spirit of the Constitution of the United States, but also violates the letter of the Constitution. . . .

. . . It confers upon the Attorney General the power to control many facets in the daily lives and in the private lives of the people of the United States. It greatly broadens Federal supervision and regulation—going into new areas—over the activities of business, commerce, and industry. . . .

One of the saddest aspects of the bill is the general enlargement of the Federal Government over affairs that have heretofore been considered the concern of the States and local governments.[3]

Senator Dirksen's comments mirrored the feelings of the bill's supporters:

The time has come for equality of opportunity in sharing in government, in education, and in employment. It will not be stayed or denied. It is here. . . .

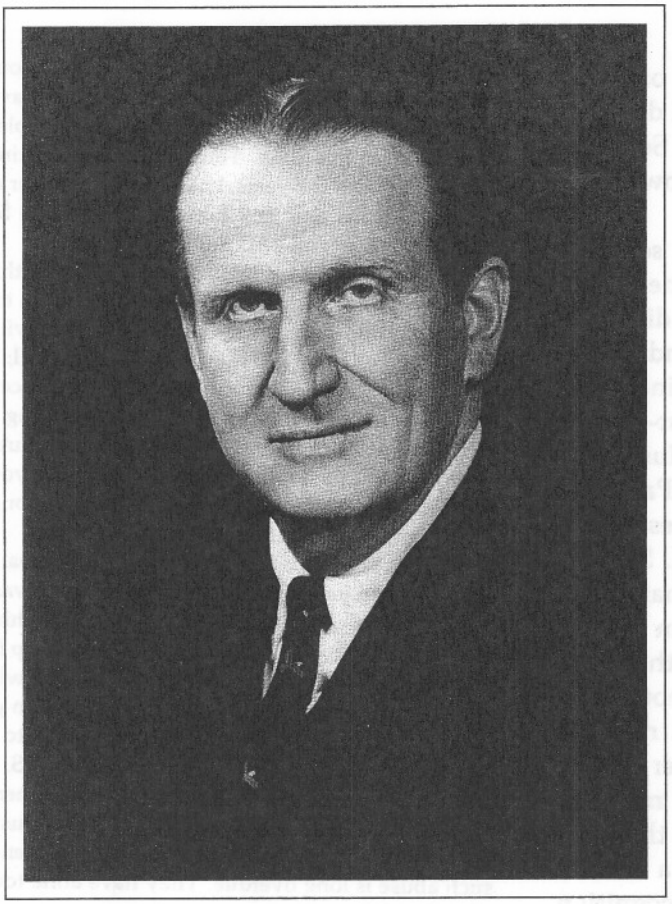
. . . For many years, each political party has given major consideration to a civil rights plank in its platform. . . . Were these pledges so much campaign stuff or did we mean it? Were these promises on civil rights but idle words for vote-getting purposes or were they a covenant meant to be kept? If all this was mere pretense, let us confess the sin of hypocrisy now and vow not to delude the people again. . . .

. . . There is another reason why we dare not temporize with the issue which is before us. It is essentially moral in character. It must be resolved. It will not go away. Its time has come.[4]

The outcome, once cloture was invoked, was never in doubt. Again, the southern senators resorted to no parliamentary games or post-cloture delaying tactics. They offered serious amendments and accepted the verdict gracefully. Thirty-four roll-call votes occurred on June 16. On June 19, the bill passed, 73 to 27, mine being the only non-southern Democratic vote against the bill.[5]

Minority Leader Everett Dirksen's support for cloture led to passage of the 1964 Civil Rights Act. Dirksen appears here with fellow Republican Senator John Tower. *George Tames/New York Times*

The 1977 filibuster on the natural gas deregulation bill was shorter, more intense, and far more bitter than the 1964 civil rights filibuster. The bill came up on September 19, and Senators Lloyd Bentsen of Texas and James Pearson of Kansas offered a substitute providing for the eventual end of price controls on newly discovered natural gas. Cloture was invoked on the Bentsen-Pearson substitute by a vote of 77 to 17 on September 26, but a post-cloture filibuster immediately began, led by Senators Howard Metzenbaum of Ohio and James Abourezk of South



Senator James B. Allen developed the "post-cloture filibuster." *U.S. Senate Historical Office*

Dakota. As majority leader, I announced that there were "more than 500 amendments at the desk" and that there would be "late sessions" and "a great number of rollcall votes." [6]

In earlier years, once cloture had been invoked on a matter, the Senate had proceeded in an orderly fashion to dispose of the relatively few remaining amendments and go to a final vote. But when James B. Allen of Alabama came to the Senate in 1969, things changed in this respect. Senator Allen, courtly, soft-spoken, and highly intelligent, was also exceptionally knowledgeable about the Senate's rules and a man of courage and conviction. He developed what became known as the post-cloture filibuster. The technique enabled a single senator, by husbanding the one hour to which he was entitled under the cloture rule, to tie up the Senate for days while he called up amendment after amendment, requested the reading thereof, asked for a roll-call vote thereon, and demanded a quorum call in advance of the vote. Following the vote on an amendment (or point of order or appeal), a roll call would be demanded on tabling the motion to reconsider the vote. Because the time consumed by roll calls, quorum calls, and reading of amendments was free time and not chargeable to the senator, this process, though mostly dilatory, could last indefinitely.

Senators Abourezk and Metzenbaum had not only mastered the technique, but they had also prepared themselves well in advance by drawing up myriad amendments and having them at the desk ready for use when cloture was invoked on the natural gas bill. Following cloture, vote after vote occurred on amendments, motions to adjourn, appeals, and tabling motions. Quorum calls were numerous.

After the bill had been before the Senate for twelve days (excluding Sundays) and one all-night session, I met with Vice President Walter Mondale to plan a strategy for breaking the filibuster. I asked the vice president to take the chair and rule on points of order—which I and other senators would raise—making various motions and quorum calls dilatory under cloture and peremptorily ruling amendments out of order "on their face" (for example, as being incorrectly drawn or not germane), thus avoiding the endless roll calls that could otherwise consume weeks.

Vice President Mondale took the chair, issued rulings on the points of order, and repeatedly and consistently recognized me, as majority leader, for the calling up of amendments which the chair then ruled out of order. Within a matter of minutes, thirty-

three amendments were ruled out of order that otherwise would have required days for disposition at the pace to which Senators Abourezk and Metzenbaum had slowed the Senate.[7]

Pandemonium broke loose as senators were denied recognition to appeal the chair's rulings declaring the amendments disqualified, and both the vice president and I were severely criticized for the extraordinary actions we had taken to break the post-cloture filibuster. Senators Edmund S. Muskie of Maine, Frank Church of Idaho, and Paul Sarbanes of Maryland vigorously protested the denial of senators' rights to appeal. Senator Gary Hart of Colorado charged that to be "foreclosed from an appeal" was an "abuse of leadership authority" and said that "the U.S. Senate has just seen an outrageous act." Senator Jacob Javits of New York raised a point of order making it out of order for the chair to successively recognize the majority leader so as to deny other senators the right to appeal the chair's ruling on a matter "raised in the course of the first recognition by the majority leader." [8] I asked consent for five minutes to discuss the point of order, but Senator John Culver of Iowa objected. Senator Sarbanes then asked that Senator Javits and I be given five minutes each to discuss the point of order before the chair ruled. That request was granted, and my remarks, in part, were as follows:

. . . Mr. President, we have come to a situation here in which it is not just the accommodation of a Senator that is involved; it is, rather, the accommodation of the Senate itself.

We have heard talk about the abuse by the leadership of its prerogatives. We have heard talk about the abuse of the custom of preferential recognition of the majority leader. What about the abuse of the rules to which every member of the Senate on both sides of the aisle has been subjected for the last 13 days and 1 night? What about that abuse of the rules? What about the abuse of the Senate itself, when we have stood here hour after hour. . . .

Now it came to the point that we saw we could not reason with a handful of filibusterers—and I have been on their side . . . on the basic issue of complete deregulation at this time. Time and time and time and time again, over the years, I have been the spear carrier, in fighting this able and honorable man, the Senator [James B. Allen] from Alabama. . . .

. . . I have gone on the battleground with this man because nobody else in the Senate was chosen to do so or was equipped to do so. I did it on the civil rights attorneys' fee bill; I did it on the anti-trust bill; I did it on [the resolution] that set up the Intelligence Committee; I did it on the extension of the Voting Rights Act; I did it on the fight to reduce the cloture votes from two-thirds to three fifths. Those of you who today charge the majority leader of having abused his prerogatives did not then raise your voice.

I would say that the Senator from Alabama . . . at that time had just as much right to say that I was abusing the rights of the leadership when I took him on. I was the majority whip then. But who stood up for him in that day? Nobody! Where were those then who now stand against me because I am now seeking to get this bill out of here, and because I am seeking to take a stand against the continued abuse of the U.S. Senate and every member of it? Where were they then? . . .

. . . I am trying to keep Senators from abusing the Senate, and I think it is self-evident that the ending of such abuse is long overdue. They have done too much of it already. . . .

In defense of the vice president, who, except by unanimous consent, is not allowed to address the Senate, I said:

. . . He is not here, as someone has said, to . . . pull the rug out from under us. The Vice President is here to get the ox out of the ditch. The ox is in the ditch! That is why the Vice President is here!

Reminding senators that President Jimmy Carter had publicly stated his intention to veto outright deregulation, I asked:

. . . What more do you want? You know you are going to win in conference. You know if outright deregulation gets through conference, the President will veto it. What kind of a charade do you think the American people are going to be fooled into thinking this is?

I say it is long past time, Mr. President, to stop this filibuster, and to stop the abuse of the Senate and its

During a lengthy filibuster, a weary senator rests on a cot set up in the old Senate chamber.
U.S. Senate Historical Office

rules. It was for that reason that I, in this instance, took extraordinary advantage of my prerogative as leader to be recognized. One has to fight fire with fire when all else fails.

[Applause, Senators rising.] [9]

Senator Javits, at the suggestion of Senator Allen, withdrew his point of order. The struggle had left some deep wounds, but the strategy had been successful. The back of the filibuster had been broken, and agreement was soon reached for a final vote. The next day, on October 4, the Senate voted, 50 to 46, to accept a modified Bentsen-Pearson substitute, and the bill was passed. The bill had been debated for fourteen days, and, in the process, 130 roll-call votes had occurred, 111 of them after cloture was invoked.

This was the roughest filibuster I have experienced during my thirty-one years in the Senate, and it produced the most bitter feelings. Yet, some important new precedents were established in dealing with post-cloture obstruction. One such precedent requires the chair to take the initiative, under cloture, "to rule out of order all amendments which are dilatory or which on their face are out of order." [10] Another precedent was established requiring the chair, under cloture, to take the initiative "to rule out of order all dilatory motions, including calls for a quorum, when it has been established by a quorum call or rollcall that a quorum is present and the Chair's count reaffirms that a quorum is still present." [11] A point of order was also made, and upheld by Senate vote, that a senator has "the right to recall his own amendments qualified and pending under cloture and have them removed from the desk prior to being called up," thus preventing them from being offered by another senator.[12] On another point of order, the Senate, by roll-call vote, held that, when op-

erating under cloture, "a request by a Senator to conduct business which the Senate declines to conduct, for instance, the making of a motion which is ruled dilatory, the offering of an amendment which is ruled out of order or dilatory, a request for the yeas and nays which is refused, is not the transaction of business for the purpose of calling another quorum." [13]

Never have so many attempts been made to break a filibuster as were made during the One-hundredth Congress in the effort to enact campaign financing reform. The legislation, proposed by Senator David Boren of Oklahoma and myself, was made the pending business before the Senate on June 3, 1987, and it immediately encountered stiff opposition from Senate Republicans. The bill had earlier been referred to the Senate Committee on Rules, chaired by Senator Wendell Ford of Kentucky, and, following hearings, had been reported back to the Senate in the form of a substitute. The bill provided for a voluntary system of spending limits and partial public financing of Senate general election campaigns; it limited contributions from political action committees (PACs); and it improved reporting and disclosure of campaign finance activities. The public financing would derive from a voluntary tax checkoff, a feature of presidential campaign financing, by which individual income-tax payers indicate on their tax forms that they wish to check off one dollar to go into the presidential tax fund.

Republican Senator Mitch McConnell of Kentucky, one of the leaders in the filibuster against the bill, was reported by a Kentucky newspaper to have stated that the Senate Republicans had met and agreed to bind themselves as a caucus to vote against any bill containing spending limits and public financing.[14] From the beginning, therefore, the division was along party lines, and, since the makeup of the Senate was 54 Democrats and 46 Republicans, the outlook for cloture was bleak.

The first cloture vote occurred on June 9, and, with one senator absent, the vote was 52 to 47.[15] Two Republicans voted for, and three Democrats voted against, cloture. The missing Democrat, if present, would have voted for cloture, giving the proponents a total strength of 53. Four more cloture votes occurred in June—daily, the sixteenth through the nineteenth—and the overall strengths remained the same, 53 to 47—a majority but not the three-fifths needed for cloture. The lines had not budged! [16]

I decided to put campaign financing reform aside for the time being, so as to take up the budget conference report, the omnibus trade bill, and other measures that were beginning to clog the legislative pipeline. Meanwhile, negotiations with Republicans would continue in an effort to break the gridlock on campaign reform.

On August 3, the Senate resumed consideration of the election reform measure, after Senator Boren and I decided to modify the bill, hoping to mollify the Republican opposition. "We have completely removed public financing as a basis for supporting campaigns," said Boren, in explaining the change. "We have provided a bill with no net cost to the taxpayers." [17]

Debate continued on the bill and other measures through August 7, when the Senate adjourned until September 9 for the summer recess, with a cloture vote scheduled for Thursday, September 10.

On the September 10 cloture vote, supporters of campaign financing reform showed a gain of two votes, picking up one Republican and one Democrat. The vote was 53 to 42, and two of the five absentees were supporters of the bill; hence, the overall strength of the proponents had grown to 55.[18] Yet, a seventh cloture vote, on September 15, showed no further movement, with

51 yeas, 44 nays, and 5 not voting. Four of the missing senators were for cloture. With a legislative logjam in the making, I shelved the bill for the remainder of the session but promised to "revisit" the bill "next year." [19]

The Senate did, indeed, revisit campaign financing when, on February 1, 1988, I brought the bill back for further consideration. On the fourth, the Senate adjourned until February 15, for the Presidents' Day recess. Upon returning, the Senate renewed debate on February 17 on the financing reform bill. Meanwhile, a small group of senators, appointed by the majority and minority leaders, had been attempting to negotiate a compromise. Their efforts had not borne fruit.

On Tuesday, February 23, in Senate floor comments, I referred to the seven cloture votes in 1987, when "little interest was stirred because we had a very casual filibuster that lasted from 9 o'clock in the morning until 5 or 5:30 in the afternoon, and in the meantime we would take up other measures," and I said there was "no point in having a nice, easygoing filibuster here, carrying on a slow filibuster in the back rooms. Let us have it out here on the floor. . . . where the American people can see . . . that this is a filibuster." Stating that the other side had drawn a line against any limit on campaign spending, I said that "we on this side . . . are drawing a line also, and that line is there can be no genuine campaign financing reform in this country without a limit on campaign spending." I then stated:

> Having drawn the lines in the sand, we have decided that we will just go around the clock. . . .
>
> . . . there is no point in continuing the casual, gentlemanly, good-guy filibuster because it will just turn out as it did last year: Have a few cloture votes, everybody just takes it easy . . . everybody goes home and gets a good night's sleep, and everybody protects everybody else.
>
> The American people will understand this is a filibuster. They will understand who is not willing to let the Senate vote on the bill.[20]

Senator Alan Simpson, the minority whip, and acting leader at the time, said that he saw no point "in going through the night" as we would "not accomplish anything," and he stated the position of the bill's opponents:

> We cannot change the bill by amendment. Our amendments would be voted down by the same party line vote that has characterized seven cloture votes that we have had on this measure last year.
>
> So we know what happens when we relinquish our position. . . .
>
> . . . We are ready to go all night, we are ready to go all day. . . .
>
> . . . we are prepared and we will have our sturdy SWAT teams and people on vitamin pills and colostomy bags and Lord knows what else we will have to have to improve our ability to stay here.[21]

So, indeed, the lines were drawn, and the debate continued into the evening and through the night, with Senators Robert Packwood of Oregon, Rudy Boschwitz of Minnesota, and other Republican senators doing most of the speechmaking. Floor attendance was poor, but, on a roll-call vote to have the sergeant at arms request attendance of absent senators, eighty-nine senators voted. On similar motions as the hours passed, first seventy-four senators and later seventy-eight senators voted. On a fourth motion to instruct the sergeant at arms to request attendance, the vote was 47 to 1 in favor of the motion, with 52 senators absent. Since not a single Republican senator voted, it was clear that the Republicans had decided to boycott the floor on roll calls designed to secure a quorum. I then moved that the sergeant at arms "arrest the absent Senators and bring them to the Chamber." The vote was 45 to 3, and, again, not one Republican was in the chamber for the vote.

After a long delay, two of the absent Democrats showed up. Finally, Sergeant at

Arms Henry Giugni located Republican Senator Packwood at his office and placed him under arrest. Packwood agreed to accompany Giugni to the Capitol but insisted on being carried into the chamber in order to make the point that he was not entering voluntarily. At 1:17 a.m. on Wednesday, the Oregon senator, gracefully accepting the action of the Senate and its sergeant at arms, allowed himself to be carried onto the Senate floor, thus making a quorum of 51 senators.[22]

At that point, I offered a cloture motion for the eighth time on the bill. In so doing, I commented, "We have seen that the opposition is not willing to vote on meaningful campaign financing reform, not willing to talk on the pending legislation, and ultimately not willing to stay on the job." [23] I then moved to go into executive session for a vote on a nomination, which attracted the attendance of sixty-four senators, after which the debate resumed on campaign financing reform.

Later, acting Republican leader Alan Simpson and I called a truce and agreed to restrict the activities on both sides to speeches by selected senators on the substance of the bill. The tensions subsided, and senators made lengthy speeches throughout the rest of Thursday morning, February 25. At noon on Thursday, Senator John McCain of Arizona yielded the floor briefly, and the chair announced that "the Senate having been in continuous session since yesterday, pursuant to the order of the Senate of February 29, 1960, the Senate will now suspend while the Chaplain offers a prayer." [24]

From the 10 a.m. convening on Tuesday until the Senate finally recessed on Thursday, February 25, at 7:24 p.m.,[25] only one brief respite had occurred: on Tuesday from 12:47 p.m. until 2 p.m. to accommodate party conferences. The Senate had been in continuous session for fifty-three hours and twenty-four minutes—more than two days and two nights. When the cloture vote came on Friday, February 26, 1988, the bill's proponents showed no gains in overall strength. The vote was 53 to 41, with two of the five absentees being known supporters.[26] Three of 46 Republican senators had voted with the Democrats, while two of the 54 Democrats had broken from the fold and voted with the Republicans. Hence, party lines had remained almost intact throughout the controversy. Later in the day, I returned the bill to the calendar by unanimous consent and shelved it for the remainder of the One-hundredth Congress.[27]

The campaign finance filibuster had produced no new precedents, except for the number of cloture votes (eight). It had bridged more than eight months of the first and second sessions, although it was technically before the Senate for only twenty-seven days. In the apt words of Senator Warren Rudman of New Hampshire, "the events of the last 48 hours were a curious blend of 'Dallas,' 'Dynasty,' 'The Last Buccaneer' and the Friday night fights." [28] In accepting the bill's defeat, I paraphrased the Apostle Paul's words: "We have fought a good fight. We have finished our course. We have kept the faith." [29]

Some of the Republican members groused for a few days about my motion to "arrest" senators, but the Senate moved on to other business, and when the One-hundredth Congress ended at 3:16 a.m. on October 22, 1988, it was generally lauded as the most productive in over twenty years.

My discussion of Senate filibusters in this chapter has, by necessity, concentrated on only a few of the many talkathons that have occurred during the past 150 years. I have emphasized the longest speeches and the most dramatic of the filibusters, as well as those that were particularly illustrative. I have chosen to mention some incidents, for example, because of the precedents that were

established, as in the filibusters of 1879, 1897, 1908; others I have selected because of the issues involved, like the 1917 Armed Ship bill that led to the first cloture rule; and some I have described because of the colorful senators who participated, such as Huey P. Long.

I have dwelt at length on the 1964 civil rights filibuster because of the orderly, dignified, and methodical way in which it was conducted, the total absence of dilatory tactics, its great length, and the historic legislation that was produced. It was also a filibuster that I experienced first-hand as a participant.

I have commented on the 1977 natural gas deregulation filibuster because of its fierceness, the several important precedents that were set, the dilatory tactics that were effectively employed, and because it was the classic and prime example of a post-cloture filibuster. Additionally, I was the majority leader at the time and was successful in breaking the filibuster.

During the filibuster on campaign financing reform, I was again the majority leader, but in that instance I lost the battle. That filibuster ran the gamut from low-key to very high visibility, from docile beginnings to a fire-storm ending, and it was conducted by a determined, unified, very large minority.

The 1964 civil rights and the 1977 gas deregulation struggles were not politically partisan, and the filibusterers failed to prevent the legislation from passing the Senate. In the 1987–1988 effort to enact campaign financing reform, however, the battle was highly partisan and the filibusterers succeeded in defeating the legislation.

Since filibusters generally commence without official declaration, no definitive list exists of all those that have occurred throughout the Senate's history. Cloture, on the other hand, is a formal action, and more reliable statistics are available concerning the number of cloture votes taken, although cloture has not been attempted against every filibuster since the rule's adoption in 1917.

Between 1917 and the 1960's, cloture was seldom attempted and, prior to 1971, it had succeeded only 10 times out of 49 attempts. From 1971 through 1989, however, cloture was invoked 87 times, a phenomenal increase. Hence, during the seventy-two years from the cloture rule's inception in 1917 through 1989, cloture was invoked a total of 97 times in 280 attempts.[30]

From these statistics, it is clear that the number of filibusters has increased greatly during the last nineteen years. Why such an increase? Having served in one leadership capacity or another during this entire period, and having offered more cloture motions than has anyone else, I must state that the statistics, standing alone, are a bit misleading. Cloture motions in recent years have frequently been offered, and adopted, in order to meet the mere challenge of a filibuster threat by a single senator or small group of senators. Resistance to a bill or nomination by a handful of senators who refuse unanimous consent to its consideration has often dissipated once cloture was invoked on the motion to take up the matter. After entering a cloture motion on a measure, I have, on several occasions, taken up some other matter rather than spend the Senate's time waiting until the second day after the filing of such a motion before a vote could be taken. If the cloture vote was successful, the legislation was then automatically back before the Senate until it was disposed of.

In a few instances, cloture has been applied solely to discourage nongermane amendments. Thus, as "the wicked flee when no man pursueth," so has cloture been applied many times when no actual filibuster was in progress.

Nonetheless, the number of filibusters has, indeed, increased considerably in recent

Two filibuster-related cartoons from the 1960's show, *left*, "The Senate battling the majority" and, *right*, Senator Dirksen reassuring the Senate that he is not planning a filibuster: "Don't panic—these are Lincoln Day speeches!" *Library of Congress*

years, for a number of reasons, including the personalities and skills of certain senators and the intensity of particular political issues. Beginning in the early 1970's, filibusters were often led by Senators James Allen, Jesse Helms of North Carolina, or Howard Metzenbaum, all of whom proved to be aggressive, courageous, and very astute in the use of the Senate rules to block actions they opposed. The past two decades also saw a number of controversial issues, such as school busing to achieve integration, voter registration, a deadlocked election for a New Hampshire Senate seat, funding for the Export-Import Bank, establishment of the federal Legal Services Corporation, creation of a consumer protection agency, loaning federal funds to the Lockheed Corporation, energy legislation, and amending Senate Rule XXII. Such issues contributed to the proliferation of filibusters during the period.

Looking back across the past two hundred years, one must conclude that filibusters have played a significant part in the Senate's history, but it was not until after the Civil War that filibustering became a weapon that was frequently and effectively employed by Senate minorities. Throughout the decades prior to the Civil War and Reconstruction, obstructionist tactics would have been considered out of place in an institution where dignity and courtesy prevailed and senators depended upon the logic and eloquence of forceful speeches to persuade their colleagues and the country to accept their views. As we have seen, filibustering came into vogue during the closing decades of the nineteenth century and was most successful when resorted to near a session's end, particularly the "lame-duck" sessions that automatically adjourned on March 4, when a single senator or small group of senators could exact concessions by threatening to obstruct passage of all legislation backed up in the adjournment rush. The Twentieth Amendment eliminated the notorious lame-duck session, but it did not eliminate filibusters.

Filibusters, or prolonged debate, have sometimes led to modifications that improved a bill or treaty. The mere threat of a filibuster has often resulted in a decision not to take up a bill or in the withdrawal of a nominee.

Arguments against filibusters have largely centered around the principle that the majority should rule in a democratic society. The very existence of the Senate, however, embodies an equally valid tenet in American democracy: the principle that minorities have rights. Furthermore, a majority of senators, at a given time and on a particular issue, may not truly represent majority sentiment in the country. Senators from a few of the more populous states may, in fact, represent a majority in the nation while numbering a minority of votes in the Senate, where all the states are equal. Additionally, a minority opinion in the country may become the majority view, once the people are more fully informed about an issue through lengthy debate and scrutiny. A minority today may become the majority tomorrow.

Moreover, the framers of the Constitution thought of the Senate as the safeguard against hasty and unwise action by the House in response to temporary whims and storms of passion that may sweep over the land. Delay, deliberation, and debate—though time consuming—may avoid mistakes that would be regretted in the long run. The Senate is the only forum in the government where the perfection of laws may be unhurried and where controversial decisions may be hammered out on the anvil of lengthy debate. The liberties of a free people will always be safe where a forum exists in which open and unlimited debate is allowed.

The most important argument supporting extended debate in the Senate, and even the right to filibuster, is the system of checks and balances. The Senate operates as the balance wheel in that system, because it provides the greatest check against an all-powerful executive through the privilege senators have to discuss without hindrance what they please for as long as they please. A minority can often use publicity to focus popular opinion upon matters that can embarrass the majority and the executive. Without the potential for filibusters, that power to check a Senate majority or an imperial presidency would be destroyed. It is a power too sacred to be trifled with. As Lyndon Baines Johnson said on March 9, 1949:

> . . . if I should have the opportunity to send into the countries behind the iron curtain one freedom and only one, I know what my choice would be. . . . I would send to those nations the right of unlimited debate in their legislative chambers.
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> . . . If we now, in haste and irritation, shut off this freedom, we shall be cutting off the most vital safeguard which minorities possess against the tyranny of momentary majorities.[31]

As one who has served both as majority leader and as minority leader, as a senator who has engaged both in filibustering and in breaking filibusters during my thirty-one years in this body, I believe that Rule XXII today strikes a fair and proper balance between the need to protect the minority against hasty and arbitrary action by a majority and the need for the Senate to be able to act on matters vital to the public interest. More drastic cloture than the rules now provide is neither necessary nor desirable.

We must not forget that the right of extended, and even unlimited, debate is the main cornerstone of the Senate's uniqueness. It is also a primary reason that the United States Senate is the most powerful upper chamber in the world today. The occasional abuse of this right has been, at times, a painful side effect, but it never has been and never will be fatal to the overall public good

in the long run. Without the right of unlimited debate, of course, there would be no filibusters, but there would also be no Senate, as we know it. The good outweighs the bad, and not all filibusters have been bad, even though they may have been exasperating, contentious, and perceived as iniquitous. Filibusters are a necessary evil, which must be tolerated lest the Senate lose its special strength and become a mere appendage of the House of Representatives. If this should happen, which God avert, the American Senate would cease to be "that remarkable body" about which William Ewart Gladstone spoke—"the most remarkable of all the inventions of modern politics."